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It is doubtful I could have completed this book without the patient cooperation of a large number of Washington tax attorneys who helped me in the struggle to penetrate the complexities of the Internal Revenue Code and strove to save me from error. Naturally, they are not responsible for whatever errors may stubbornly have remained in the manuscript (despite my conscientious efforts to avoid them) or for the views expressed in this book, which are, of course, my own. Among those who gave generously of their time, patience and knowledge were Daniel Burt, Mortimer Caplin, Sheldon Cohen, Louis Diamond, Lester G. Fant, III, Joseph Guttentag, Robert Klayman, Jerome Kurtz, Barry London, Mitchell Rogovin, Stanford Ross, Norman Schwartz, Stuart Seigel, Walter Slocombe, Thomas Troyer, Stefan Tucker, Ronald West, the late Lester Uretz and Henry Zapruder. There are some others; they know who they are and I trust that they know of my appreciation for their help.

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Allen's patience, resourcefulness and supreme conscientiousness. I know I am.

Finally, how does one go about thanking one's family? There are so many things to thank them for: their forbearance for a host of weekends and evenings of absence or abstractedness or sleepiness or grouchiness on my part—and so much more that has little to do with this book and so much to do with the quality of my life (as I tried to indicate in the Dedication). Of no one is that truer than Leni. Her special warmth and wisdom are blessings which, I'm sure, deserve more thanks than they receive, but not more than I feel, every day of my life.

PHILIP M. STERN

Washington, D.C.
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GLOSSARY

"ABC" transaction—This refers to a triangular transaction, permitted prior to 1969 but barred by the 1969 "Tax Reform Act," under which oil companies were able, in effect, to borrow money to purchase new mineral properties or companies, paying back the "loan" with *un*taxed dollars, rather than with after-tax dollars as is the case in usual loan arrangements.

These were called "ABC" transactions because they involved three parties: A (the would-be seller of a mineral property), B (the prospective purchaser) and C (a helpful intermediary). Let's say A wished to sell an oil well for $100,000. If B were to put up $20,000 of his own and borrow the remaining $80,000 from a bank, intending to use the future income from the oil well to repay the bank, he would have to pay taxes on that income and be able to use only the diluted, *after*-tax dollars for the loan payment. But in an "ABC" transaction, A gets his $100,000 not by having B borrow the money from a bank, but by selling the oil well to B for a $20,000 down payment and at the same instant (that was a requirement under the law) selling (technically, transferring) to C, for $80,000, the right to $80,000 of the future income from the well. Under the pre-1969 law, B would fulfill that obligation by paying C the $80,000 *without having to pay any tax on it himself*. That way, B could repay with untaxed dollars rather than after-tax dollars. If B was a corporation (as was usually the case),

that meant the loan could be repaid with about half as many profit dollars as would have been the case if 48 percent of the profits went for taxes, leaving only about half of them to repay the loan. In 1969, Congress amended the law so as to treat these "ABC" transactions for what they really were: loan arrangements.

"Ability to pay"—As used in this book, "ability to pay" is a shorthand name for the basic philosophic concept underlying the graduated income tax (under which higher incomes are subject to stiffer tax rates than lower incomes).

This concept is based on the premise that as a person's income rises, he is "able to pay" to the government a greater share of each additional dollar of income. Thus, under 1973 tax rates, a married man need only pay nineteen cents of his four thousand and first dollar of taxable income, but on his four *hundred* thousand and first dollar of taxable income he is deemed "able to pay" seventy cents.

Accelerated depreciation—See *Depreciation.*

"Adjusted gross income" (AGI)—A taxpayer's income before taking his exemptions and personal deductions.

More specifically, it is, generally speaking, his total dollars received, minus (a) those items he does have to report on his tax return or include in computing his tax (such as interest on state and local bonds, Social Security benefits, etc.; (b) his business expenses; and (c) one-half of all his long-term capital gains (see *Capital gains*). Note that because of (b)—which can include very large deductions for such things as oil deductions or farm losses—and (c)—which can exclude large amounts of capital gains income—"adjusted gross income" can markedly understate a person's real total income.

Averaging—See *Income averaging.*

"Bunched income"—Refers, generally, to the uneven receipt of income—peaks in some years, valleys in others—in such a way that in peak years the taxpayer is pushed into an artificially high tax bracket.

Thus, he is obliged to pay more taxes than another taxpayer

who receives the same number of dollars spread evenly over the same number of years. In 1964, Congress wrote into the law a system of "income averaging" (see elsewhere in Glossary) designed to aid the person whose income varies greatly from year to year (e.g., the writer who sells his novel to the movies or, perhaps, the movie star who stars in his film).

Capital gains—Profits made on the sale or exchange of a share of stock, or a machine, building or other "capital asset" which a person has owned for more than six months (if owned for less than six months, there is no tax advantage) and which is not regularly used in his trade or business or held by him primarily for sale to customers. (There are some kinds of income which do not involve the sale of a capital asset—such as coal royalty income or lump-sum pension benefits—but which the law taxes as if they were capital gains.)

Only half a person's capital gains are included in his taxable income; the other half escapes tax entirely. For the first $50,000 of capital gains, the maximum rate on the included half is 50 percent—making the top capital gains rate 25 percent (50 percent tax on half the gain). But on that first $50,000 of gains each year, the capital gains rate may be less than 25 percent: if, for example, an individual's own top-bracket rate is 36 percent, then his capital gains rate is only 18 percent (36 percent tax on half the gain).

On capital gains above the first $50,000, the top rate on the included one-half is 70 percent, so that the maximum capital gains rate is 35 percent (70 percent on half the gain).

But note that in no event is the capital gains rate more than half as high as the rate on a person's "ordinary income."

Depletion; depletion allowance—A tax deduction that may be taken by the owners of oil and gas wells, minerals and other natural deposits.

There are two forms of depletion: "cost depletion" (limited to the original cost of the mineral property and similar to depreciation) and "percentage depletion," which is not based on, or limited to, original cost but is computed each year as a percentage of the gross income from the mineral property. It cannot, however, exceed 50 percent of the net (after-expense) income from the property. For example, oil and gas are accorded a 22 percent

depletion allowance, which means that for an oil property with $100,000 of *gross* income per year, the depletion deduction would be $22,000. If, however, the *net* (after-expense) income from the property were $40,000, the depletion allowance would be limited to half that, or $20,000.

Depreciation—An annual tax deduction designed, in general, to recognize the wearing out of a capital asset such as a machine or building with the passage of time, and to permit the owner to recover, tax-free, his original capital investment in that asset over its "useful life." The "useful lives" of various kinds of assets are suggested by guidelines issued by the Treasury Department.

"Straight-line" depreciation consists of uniform deductions taken during each year of the asset's "life." For example, on a $100,000 asset with a ten-year "life," the annual deductions would be $10,000.

"Accelerated" depreciation may follow various formulas, but in essence it permits greater-than-average deductions in the early years of the asset's life, gradually shrinking until they become smaller than average in the later years. That is, in the case of the $100,000, ten-year asset referred to above, the early-year deductions would be greater than $10,000, the later-year deductions less than $10,000.

"Double taxation"—This usually refers to the fact that a dollar of corporate dividends is subjected to taxation twice: once in the hands of the corporation and again in the hands of the corporate shareholder. There are numerous other instances of "double taxation," such as the payment of an excise tax with dollars that have already been subject to an income tax.

Estate tax—The tax imposed on the transfer of property after a person's death. Only amounts above $60,000 are subject to this tax.

Exclusions—Income a taxpayer does not have to include in computing his tax.

This would include such items as various government payments (Social Security, railroad retirement and veterans' benefits), interest on state and local bonds, and all money received by gift or inheritance.

Gift tax—A tax that may be imposed on the giver when he transfers property to another person during his lifetime.

Each taxpayer is permitted to give $3,000 per year ($6,000 a year for married couples) tax-free to as many people as he may choose. Over and above that, each taxpayer is permitted to make $30,000 of tax-free gifts ($60,000 for married couples) during his lifetime.

Head-of-household—An unmarried person who supports a relative as part of his household, or who supports his father or mother even if they are not part of his household.

Heads-of-household are taxed according to special tax rates that lie roughly midway between the rates applicable to unmarried taxpayers and those applicable to married joint-return filers.

"Imputed" income—Income you receive in some form other than cash.

For example, your bank provides you certain services free, in lieu of paying you interest on your deposits. The value of those services is "imputed" income, as is the value of the housing you get from your owned home, over and above your expenses. Generally speaking, "imputed" income is not taxed in the United States, but in some countries the imputed rental income on owner-occupied homes is or has been taxed to the owner (see page 356).

Income averaging—A means of alleviating the so-called "bunched income" problem (described elsewhere in Glossary) by permitting a taxpayer, in effect, to smooth out the peaks and valleys of his income and compute his taxes as if the income had been received more evenly over a period of years.

For example, under the provision of the law enacted in 1964, anyone whose income has varied more than one-third in a five-year period could, in effect, lop off his above-average income in the fifth year and have it taxed as if it had been spread evenly over the prior four years.

Income-splitting—Refers to various means by which a given amount of income may be split up into smaller and separately taxed "bundles," thus avoiding the high tax rates that would apply if the income were taxed as a single "bundle."

The best-known and most widely used method is the filing of

a joint tax return by married couples, which permits the husband's income to be taxed as if it were two half-sized "bundles." For an example of how this operates, see pages 121–22.

"Ordinary income"—Income that is subject to the regular income tax rate schedules, as distinct from "capital gains," which are accorded special rates (see *Capital gains*).

Percentage depletion—See *Depletion.*

Retirement income credit—A provision easing the taxation of those over sixty-five.

Under this provision, an elderly person's tax bill may be reduced by an amount equal to one-fifth of his first $1,200 of pension, annuity, dividend, interest or royalty income. For example, it gives a person over sixty-five with $1,000 of pension income a $200 tax cut. However, the basis for the tax reduction is reduced by one dollar for every dollar (over $1,200) of either Social Security benefits or income earned from a job. Those over seventy-two may earn as much as they like without any reduction of their tax credit.

"Spin-off"—A device used for transforming a corporate dividend payment from "ordinary income" into a capital gain.

Stock option—The right granted a corporate officer or director to buy company stock at a fixed price within a certain period of time.

Example: An executive, given a five-year option (or right) to buy 5,000 shares of his company's stock at $25 per share, later exercises that right and still later sells the stock, whose market price has gone up to $50 per share. If his company's option plan meets certain requirements in th .ax law, and if he has held the stock at least three years, his $125,000 profit is taxed at the special capital gains rate.

"Straight-line" depreciation—See *Depreciation.*

Taxable income—The amount left after a taxpayer has claimed all his exemptions and deductions; i.e., the amount actually subject to tax.

Tax Court—A special court made up of sixteen judges whose function is to resolve disputes between taxpayers and the Internal Revenue Service.

Although headquartered in Washington, individual judges hear cases all around the country. Tax cases may also be considered by the regular district courts of the United States and by the Court of Claims. Appeals from decisions of the Tax Court may be taken to the appropriate Federal Circuit Court of Appeals.

Tax credit—A subtraction from the amount of *tax* a person owes. (This is different from a tax deduction, which is a subtraction from the amount of a person's *income* that is subject to tax.)

A tax credit works this way: Suppose an elderly person has a $125 retirement income credit (see page 353). He figures up his tax bill, which happens to come out to $625, and then subtracts $125 from that. The tax he owes the government is thus reduced to $500. Under a tax credit, all taxpayers receive the same dollar advantages, no matter what their tax bracket—which is not the case with a tax deduction (see below). Examples of tax credits: the retirement income credit; the foreign tax credit; the credit for small political contributions.

Tax deduction—A subtraction that reduces the amount of a person's *income* that is subject to taxes.

Example: Suppose a taxpayer in the 58 percent tax bracket has $50,000 of income that would otherwise be taxable. If he takes a $1,000 medical expense deduction, his taxable income is reduced to $49,000. If he had not been permitted to deduct the $1,000 (if, say, he had bought a mink coat with it), $580 of the $1,000 would go to the government. *In this sense, Uncle Sam has paid $580, or 58 percent of the deducted amount.* The higher your tax bracket, the greater portion the government pays. For a person in the 26 percent bracket, for example, the government pays only $260 of a $1,000 tax-deductible medical bill.

"Tax shelter"—Generally speaking, any device or plan which shelters a person's income from the regular income tax rates.

Trusts—A legal—*and separately taxable*—arrangement with respect to property or wealth in which one or more "trustees" hold

title to the property and manage it for the benefit of one or more beneficiaries.

For example, a father may put property in one trust—or several—for his minor son, to be managed by trustees until the son reaches a certain age. Since each trust is, in most cases, separately taxable, this offers the possibility of considerable tax savings through income-splitting (see elsewhere in Glossary).

Value added tax (VAT)—A tax imposed (and passed on) at each stage of the manufacturing-selling process and ultimately added to the price of the goods that the consumer pays at retail. To take a simplified example, under a VAT the manufacturer calculates the "value added" by him (by subtracting the costs of materials from the amount he receives from the wholesaler); the wholesaler, in turn, calculates the "value added" by him (by subtracting what he paid the manufacturer from what he receives from the retailer); the retailer calculates the "value added" by him (by subtracting what he paid the wholesaler from what he charges the consumer). At each stage, a tax is computed on the basis of the "value added," and that tax is immediately added on—by the manufacturer, in computing what he has to charge the wholesaler; by the wholesaler, in reckoning what he has to charge the retailer; by the retailer, in fixing the price he charges to the consumer. Thus, according to most analyses of the VAT, it is the consumer who ends up bearing the burden of the tax—and the VAT is nothing but a hidden sales tax. It is hidden in the sense that, unlike the sales tax, which is separately broken out so that the purchaser is aware of what he is paying when the cashier rings it up, the VAT is usually built into the price of the product.

NOTES AND SOURCES

EXPLANATION OF ABBREVIATIONS

Budget—The Budget of the United States Government, which sets forth the proposed expenditures in various Federal activities as recommended by the President in any given fiscal year (see *FY*, below). Available for purchase through the Government Printing Office, Washington, D.C.

Cambridge Institute Pamphlet—"Basic Facts: Distribution of Personal Income and Wealth in the United States," by Letitia Upton and Nancy Lyons. Published in May 1972 by the Cambridge Institute, a nonprofit research organization, 1878 Massachusetts Avenue, Cambridge, Massachusetts.

Compendium—Refers to "Tax Revision Compendium: Compendium of Papers on Broadening the Tax Base," a three-volume collection of papers on a broad range of tax policies collected and published by the House Ways and Means Committee in 1959. *2 Compendium 875* means Volume 2 of the Compendium, at page 875.

CR—Congressional Record; *100 CR 12312* refers to Volume 100 of the permanent, bound Congressional Record at page 12312. The notation "(Daily)" means the reference comes from the nonpermanent Record, whose page numbers are different from the permanent Record's.

Cum. Bull.—The Cumulative Bulletin, containing published Treasury Department and Internal Revenue Service regulations.

Dugger—Refers to "Oil and Politics," article by Ronnie Dugger appearing in the September 1969 issue of the *Atlantic*, pp. 66–90.

Economic Indicators—Monthly statistical publication prepared by the President's Council of Economic Advisors.

Eisenstein—Refers to *The Ideologies of Taxation* by the late tax attorney Louis Eisenstein (The Ronald Press, 1961).

Engler—Refers to *The Politics of Oil: A Study of Private Power and Democratic Directions* by Robert Engler (University of Chicago Press, 1967).

F.2d; F. Supp.—Federal Reports, Second Series; The Federal Supplement. A series of volumes reporting decisions of Federal courts. *220 F.2d 890, 895* means that the case quoted begins in Volume 220 of the series at page 890, but that the particular quotation in question appears at page 895.

French—Refers to "Why the Rich Shouldn't Worry About Tax Reform," article by V. O. French in the *Washington Monthly*, July 1972, pp. 29–36.

FY—Fiscal year, the government's accounting year, which ends June 30. *FY 1962* refers to the twelve months ending June 30, 1962.

H. Doc.—House Document. These frequently contain Presidential messages, including veto messages. *H. Doc. 43, 80-2* refers to House Document No. 43 of the Eightieth Congress, Second Session.

H.R.—Designates a bill introduced in the House of Representatives. Senate bills bear the prefix *S.*

H. Rep.—House Report. the report accompanying a bill issued by the committee of the U.S. House of Representatives that handled the bill. *H. Rep. 491, 81-2* refers to House Report No. 491 of the Eighty-first Congress, Second Session.

IRB—Internal Revenue Bulletin, a publication put out by the Internal Revenue Service that periodically sets forth IRS rules, regulations or interpretations of the law.

IRC—Internal Revenue Code, the basic tax law of the United States. *IRC Sec. 1237* refers to Section 1237 of the Code.

HWM—House Ways and Means Committee (the committee of the House of Representatives that deals with all tax legislation). *1969 HWM 456* refers to general tax hearings held by that committee in 1969, at page 456.

HWM Report—The report issued by the Ways and Means Committee containing the Committee's general and technical explanation of a given piece of legislation approved by it. *1969 HWM Report* refers to House Report 91-413, Ninety-first Congress, First Session. *1971 HWM Report* refers to House Report 92-533, Ninety-second Congress, First Session.

JCER—Congress's Joint Committee on the Economic Report. *1955 JCER 412* refers to page 412 of the collection of papers on "Federal Tax Policy for Economic Growth and Stability," compiled by the Joint Committee and issued November 9, 1955. *1955 JCER Hearings* refers to panel-discussion hearings on that same subject, also held in 1955. *1972 JCER Subsidy Papers* refers to "The Economics of Federal Subsidy Programs—A Compendium of Papers" submitted to the committee and issued in 1972 as Joint Com-

mittee prints. *1972 JCER Subsidy Hearings* refers to hearings held in January 1972 on the subject "The Economics of Federal Subsidy Programs."

Musgrave—Refers to "Tax Preferences to Foreign Investment," paper by Peggy B. Musgrave, in Part 2 of the 1972 JCER Subsidy Papers (see *JCER*, above), pp. 176–219.

PL—Public law. Refers to the number given each law that passes Congress and is signed by the President.

Pechman—Refers to writings by Joseph A. Pechman, Director of Economic Studies, the Brookings Institution, Washington, D.C. *Pechman, Federal Tax Policy* refers to his book by that name, published by Brookings in 1966, with a revised edition in 1971. *Pechman, "Rich, Poor"* refers to Brookings Reprint 168, containing Dr. Pechman's article "The Rich, the Poor and the Taxes They Pay," reprinted from *The Public Interest*, Fall 1969.

Pechman-Okner—Refers to "Individual Income Tax Erosion, by Income Classes," by Joseph A. Pechman and Benjamin A. Okner, referred to throughout this book, first at page 6. The paper may be found in two places: Part 1 of the 1972 JCER Subsidy Papers (see *JCER*, above), pp. 13–40, and Brookings Reprint 230, May 1972.

Regs.—Refers to regulations issued by the Treasury Department and the Internal Revenue Service, spelling out in detail the policies the Department and the IRS intend to follow in implementing a tax law enacted by Congress.

Rev. Rul.; Rev. Proc.—Refers to Revenue Rulings and Revenue Procedures, different forms of interpretations of the tax law issued from time to time by the Internal Revenue Service.

Rulings Compendium—"The Public and the Rulings Process," a 1972 compendium of papers submitted to the Treasury Department by Taxation with Representation, an organization describing themselves as "Tax Experts Representing the Public Interest" and headquartered in Arlington, Virginia.

Russkay and Osserman—Refers to *Halfway to Tax Reform*, by Joseph A. Russkay and Richard A. Osserman (The Indiana University Press, 1970).

SFC—Senate Finance Committee. *1971 SFC 179* refers to the hearings on a general tax bill held by that committee in 1971, at page 179.

SFC Report—The report issued by the Finance Committee containing the Committee's general and technical explanation of a given piece of legislation approved by it. *1962 SFC Report* refers to Senate Report 1881, Eighty-seventh Congress, Second Session. *1969 SFC Report* refers to Senate Report 91-552, Ninety-first Congress, First Session. *1971 SFC Report* refers to Senate Report 92-437, Ninety-second Congress, First Session.

SOI—"Statistics of Income," published annually by the Internal Revenue Service. Unless otherwise stated, reference is to volumes on individual income tax returns (separate volumes are published for corporations' and trust, gift and estate tax returns). *1960 SOI 34* refers to the 1960 "Statistics of Income" (for individual tax returns), at page 34.

S. Rep.—Senate Report (see *H. Rep.*). *S. Rep. 485, 84-1* refers to Senate Report No. 485 of the Eighty-fourth Congress, First Session.

Stat.—The General Statutes of the United States. *70 Stat. 43* refers to Volume 70 of the General Statutes, at page 43.

Sunley—Refers to "The Federal Tax Subsidy of the Timber Industry," a paper by Emil M. Sunley, Jr., appearing in Part 3 of the 1972 JCER Subsidy Papers (see *JCER*, above), pp. 317–42.

TC, TCM, USTC—Refers to decisions of the Tax Court of the United States. *25 TC 512* refers to Volume 25 of those decisions, at page 512. *TCM* refers to memorandum decisions of that court.

Tr.—Refers to "Tax Reform Studies and Proposals, U.S. Treasury Department," the result of extensive studies conducted by that department 1966–68 and published on February 5, 1969, by the House Ways and Means Committee and the Senate Finance Committee. *Tr. 413* refers to page 413 of those studies.

U.S.—The United States Reports, containing decisions of the U.S. Supreme Court. *215 U.S. 425* refers to Volume 215 of those reports, at page 425.

Westfall—Refers to "Revitalizing the Federal Estate and Gift Taxes" by David Westfall, Vol. 83, *Harvard Law Review*, March 1970, pp. 986–1,013.

Note: Figures on revenue losses from particular tax features have been derived from the Pechman-Okner analysis (see above); from the "illustrative tax expenditure budget" (pages 155-58); from a similar listing contained in a statement to the Joint Economic Committee by Treasury Undersecretary Edwin S. Cohen, July 21, 1972, Appendix D; and from official and unofficial estimates.

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ix *Quotations:* Kenneth Lamott, *The Moneymakers* (Little, Brown, 1969), pp. 283, 281; *Clement Stone's $4 million donation:* Washington *Star*, Nov. 17, 1972, p. A1.

xvi *Judge Learned Hand:* Commissioner v. Newman, 159 F.2d 848 (1947).

1. Uncle Sam's Welfare Program—for the Rich

6 *"Tax welfare" amounts:* Pechman-Okner, Table A-5, col. 4.

7 *Getty daily income: Esquire*, Oct. 1970, p. 146.

9 *Numbers of families, amount of "tax welfare":* Pechman-Okner, Table 8, col. 1 (numbers of families); Table 6, col. 3 ("tax wel-

Page

fare"). *Note:* The figures on numbers of families in various income groups are based on *total* family income. They are therefore different from the statistics compiled by the IRS from tax returns (and cited elsewhere in this book), since the IRS figures are based on "adjusted gross income" (AGI). AGI excludes a number of income items that are included in the Brookings figures—such as income from state and local bonds and half of all capital gains.

9–10 *Federal outlays for various programs:* Budget, FY 1973, pp. 106, 144, 146, 292.

11 *Theoretical versus actual tax burdens:* Pechman-Okner. Theoretical burden may be derived by dividing Table 6, col. 1 by Table 2, col. 1. *Actual burden:* Table 2, col. 3.

11 *Average yearly income:* Pechman-Okner, Table 2, col. 1 divided by Table 8, col. 1.

13 *Capital gains "tax welfare":* Pechman-Okner, Table A-2, col. 2 divided by Table 8, col. 1.

14 *Numbers of non-taxpayers:* SOI. These figures are easily calculated by comparing the total number of returns in each income group with the *taxable* returns, usually in the first table in the given "Statistics of Income" publication.

14–15 *Examples of rich tax avoiders:* Tr. 88–94.

15 *Robert Short:* Washington *Post*, Dec. 19, 1971, p. D1, reporting on analysis by Benjamin Okner and Roger Noll, two Washington economists. According to the *Post*, in 1969 Short purchased a 90 percent interest in the Washington Senators baseball team (listing, at the time, a $9 million purchase price) for a cash outlay on his part of just $1,000. "The rest of the purchase price was made up of loans, some of them guaranteed by Short, and by the issue of preferred stock." The *Post* account also states that, at least in the first two years he owned the club, "Short vigorously refrained from pouring his own cash into the team—except as a loan, in the purchase, from one of his own companies, at a 9.75 percent interest rate." Nonetheless, his purchase of the team made him and/or his companies "eligible for tax reductions worth some $4 million, because of player depreciation over the next several years." In 1970 alone, he stood to realize "over half a million dollars in tax reductions" (provided his other business interests showed a sufficient profit). The *Post* noted that the average citizen who, say, won the Irish Sweepstakes, would have to invest no less than $7 million in AT&T stock to realize a return of $500,000. These tax savings resulted from reporting "bookkeeping losses" due largely to "depreciation" permitted under the tax law, principally of the value of the players' contracts. (Readers may note that it is Short who gets the tax benefits of the depreciation, not the athletes, whose prowess—and earning abilities—are inevitably declining with each year's passage of time.) In 1971, Short, complaining bitterly of the losses he had suffered in Washington (but not mentioning the tax savings he had enjoyed), won American League permission to move the Senators to Texas.

15 *Mrs. Dodge's $100 million of bonds:* Washington *Post*, Sept. 27, 1971, p. B1.

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15 *Hyper-rich oilman:* 109 CR 24399, Dec. 12, 1963.

15 *2,200,000 "poverty line" taxpayers:* Tr. 3.

15 *20 million $100-a-week families:* 1969 SOI, Table 1.1, col. 6.

15 *Outgoing Treasury Secretary:* Statement by Joseph Barr before Joint Economic Committee, Jan. 17, 1969.

16 *Three families with $2,450,000 of dividends:* 1970 SOI (Preliminary), p. 36, cols. 11, 12 (comparing all returns with taxable returns).

16 *Other zero-tax families:* 1970 SOI (Preliminary), p. 24, col. 1.

16 *Groups 1, 2, 3:* Press release, May 7, 1972, by Rep. Henry Reuss of Wisconsin.

16 *Ralph Senters:* Washington *Post*, May 1, 1972, p. A1.

17–18 *Corporate non-taxpayers:* Industrial companies: 118 CR H6713–14 (Daily), July 19, 1972; oil companies: *Oil Week*, Aug. 21, 1972. *Dividends paid: Moody's Industrial and Utility Manuals*, 1971.

18 *Decline in corporate tax burden; Goldman Sachs quote: Wall Street Journal*, Aug. 2, 1972, p. 1.

18 *Decline in share of revenue provided by corporation income tax:* Pechman, *Federal Tax Policy*, Table C-3, pp. 288–9.

18–19 *$4–$6 billion dividend and interest reporting gap:* The Office of Tax Analysis, U.S. Treasury Dept., estimates that in 1966 there were $3.165 billion of interest payments that should have been reported on tax returns that were not ($17.715 billion reportable, $14.55 billion actually reported). As to unreported dividends, while there is considerable disagreement on the amount, national income figures reflect total dividend payments by corporations of about $21 billion annually, with roughly $15 billion reported on tax returns. While that would indicate a $6 billion gap, an estimated half of those dividends are paid to foundations and other nontaxable entities, which would indicate a $3 billion reporting gap for dividends. This, together with the $3 billion interest gap (see above), would mean a $6 billion dividend-plus-interest reporting gap. To reflect more conservative estimates of the dividend gap, the figure "$4–$6 billion" is used here.

20 *Senator Long on work requirement for welfare recipients:* Washington *Post*, Dec. 19, 1971, p. C4.

21 *Kennedy Administration re "discriminatory and inequitable":* 1963 HWM 51.

22 *Statistics on "un-preferenced" taxpayer:* 1969 SOI, p. 93, col. 8.

23–25 *Statistics on Social Security, property, state and local taxes:* Roger A. Herriott and Herman P. Miller, "Changes in the Distribution of Taxes Among Income Groups, 1962–1968" (mimeographed paper presented to Aug. 1971 American Statistical Association meeting, Fort Collins, Colo.), Table 2.

24 (Also footnote) *Increases in payroll taxes; Pechman on who bears burden:* Pechman, "Rich, Poor," p. 31.

25 *Total tax burden figures:* Roger A. Herriott and Herman P. Miller, "Who Paid the Taxes in 1968," Table 7. Paper published in the May 1971 *Conference Board Record* as "The Taxes We Pay."

26–7 *Taxpayers 1, 2, 3:* Tr. 90, 92, 93.

26 (Footnote) *Estimated stockholdings of Taxpayer 1:* Based on aver-

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age stock yield of 3.5%, as is assumed wherever such estimates are made.

28 *Eisenstein:* p. 11.

28 *James C. Carter before the Supreme Court:* Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 516 (1895).

3. How Would You Like a Special Tax Law, All Your Own?

34 *$3 million saving for Uniroyal:* 118 CR 37635 (Daily), Dec. 8, 1969.

36 *House repeal of investment credit:* H.R. 12290 (1969).

36 *Background of Uniroyal amendment:* 118 CR 37636 (Daily), Dec. 8, 1969; 1969 SFC Report, p. 279, third full para.; *Uniroyal sales: Fortune*, May 1972, p. 192.

38 *Lockheed, McDonnell Douglas amendments:* 118 CR 37635–36 (Daily), Dec. 8, 1969; 1969 SFC Report, p. 244, para. XIII.

38 (Footnote) *McDonnell Douglas testimony:* Hearings before Senate Finance Committee on H.R. 12290 (to continue the tax surcharge), July 8–15, 1969, p. 371.

39 *Mobil Oil, Litton, Cafritz amendments:* 118 CR 37635–36; see also 1969 SFC Report at p. 235, third full para. (Mobil), p. 124, fourth full para. (Litton), and p. 43, first full para. (Cafritz).

40 *At least 15 hand-tailored amendments:* 118 CR 37635, Dec. 8, 1969.

40 *WWL provision "no coincidence": Wall Street Journal*, May 27, 1970, p. 1.

40 *Senator Long's sense of humor: Washington Monthly*, July 1972, p. 31.

42–3 *Description of Mayer amendment background:* Eisenstein, p. 156. Inner quote from S. Rep. 781, 82-1, p. 50 (1951).

43 *Alvord appearance for U.S. Chamber of Commerce:* 1951 SFC 1451, 1478.

43 *Revenue loss "negligible":* S. Rep. 781, 82-1, p. 50 (1951).

43 *1954 reenactment of Mayer provision:* 1954 SFC 1985, 2002–3; S. Rep. 1622, 83-2, p. 115 (1954).

43 *The "Hollywood Rajah":* Taken from the title of Bosley Crowther's book, *Hollywood Rajah: The Life and Times of Louis B. Mayer* (Holt, Rinehart & Winston, 1960).

43–4 *Alvord amendment:* New York *Herald Tribune*, Jan. 19, 1964.

44–5 *Merrill provision:* Eisenstein, p. 159.

46–7 *Sanders case and provision:* Leo Sanders et al. v. Commissioner, 21 TC 1012 (1954); 255 F.2d 629 (1955), cert. denied 350 U.S. 967 (1956); S. Rep. 1941, 84-2 (1956); 102 CR 7795 (1956); H. Rep. 2253, 84-2 (1956), p. 5; PL 84-269, 70 Stat. 404.

48 *L. R. McKee:* L. R. and Lulu McKee v. Commissioner, 18 TC 512 (1952).

48 *Universal Oil Products:* Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575 (1946).

49 *Clarence Cannon bill:* S. Rep. 1283, 84-1 (1955); 101 CR 12655, 1287 (1955).

49–50 *Fort Wayne Journal-Gazette, Owens-Corning Fiberglas provisions: 5 National Tax Journal* 58 (1952).

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49–50 *Budd, Sangamo Electric and Bridgeport Brass companies:* 98 CR 9072–76 (1952).

52 *No tax on $20 million of income:* 1961 HWM 107.

52 *$25 million yearly drain:* 118 CR 37635 (Daily), Dec. 8, 1969.

52 *Bill for DuPont-General Motors:* H.R. 8847, 87-1 (1961); PL 87-403 (1962).

52 *Hilton Hotels Corp.:* H. Rep. 1269, 85-1, p. 18 (1957); see also 109 CR 4172 (Daily), Mar. 18, 1963.

52 *Twin Cities provision:* 108 CR 17076 (Daily), Aug. 30, 1962. Previously vetoed bill: H.R. 8652, 87-1; S. Rep. 1101, 87-1; 107 CR 21552 (1961).

53 *Howard F. Knipp provision:* Knipp's Estate v. Commissioner, 25 TC 153 (1955); 244 F.2d 436 (1957); H. Rep. 632, 86-1; S. Rep. 1002, 86-1; 105 CR 8478 (1959).

55 *Sen. Kennedy naming 15 provisions:* 118 CR 37633–9 (Daily), Dec. 8, 1969; *Kennedy and Long interchange:* p. 37633.

55 *Father Jolley testimony:* 1969 SFC 1099–1109, Sept. 12, 1969.

56 *Sen. Kennedy quote:* 118 CR 37635–6 (Daily), Dec. 8, 1969; *Sen. Long quote:* 118 CR 37637 (Daily), Dec. 8, 1969.

56 (Footnote) *Sen. Williams quote:* 118 CR 37637 (Daily), Dec. 8, 1969.

58 *Sens. Humphrey, Lausche, Kerr:* 108 CR 17076 (Daily), Aug. 30, 1962.

58 *Prof. Walter Blum:* 1955 JCER 259.

59 *"It has been observed":* *Harvard Law Review*, May 1957, p. vii.

59 *William L. Cary:* 68 *Harvard Law Review* 745 (1955); 1955 JCER 264.

4. The Mightily-Privileged Few

60 *Percent of taxpayers in income groups:* 1969 SOI, p. 9, col. 7.

61 *Thomas J. Watson stock options:* IBM Proxy Statements, 1966–72.

62 *Ownership of tax-free bonds:* Figures based on Pechman-Okner data on the distribution of benefits to individuals from ownership of tax-free bonds. Additional information may be found in "Survey of Financial Characteristics of Consumers" (Federal Reserve Board), by Dorothy S. Projector and Gertrude S. Weiss, pp. 123, 151.

62 *Rep. John Byrnes quote:* Speech before National Conference of State Legislative Leaders, Honolulu, Dec. 6, 1968.

63 *Equivalent yields on taxable bonds:* Assumes taxpayers are married, and filing a joint return.

63 *"Daily Investor" column:* Washington *Daily News*, Apr. 20, 1972, p. 16; *New York Times ad:* Apr. 9, 1972, p. F7.

64 *Tax savings, benefits, from tax-free bonds:* Pechman-Okner data.

64 *Non-riskiness of tax-free bonds:* Russkay and Osserman, p. 273; also "Daily Investor" column (see above).

64–5 *Tax-free bond ownership by particular banks:* Chase Manhattan Corporation 1970 Annual Report, p. 26; First National City Corporation 1971 Annual Report, p. 24.

65 *Opposition to tax-free bonds by Coolidge, Carter, Mellon, etc.:* Russkay and Osserman, p. 97.

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66 ***Federal revenue loss twice gain to states; subsidy proposal by Sen. Nelson:*** 118 CR S4288 (Daily), Mar. 21, 1972.

66 (Footnote) ***States would pick up $180 million:*** Ott and Meltzer, "Federal Tax Treatment of State and Local Securities" (Brookings Institution, 1963), p. 7; 1 Compendium 726. ***State per-capita debt:*** 118 CR S14683 (Daily), Sept. 12, 1972.

67 ***Joseph Barr:*** See note, p. 15, above; ***number of taxless families:*** SOI for each year cited (see note, p. 15, above).

67 (Footnote to table) ***Examples of rich taxpayers:*** Tr. 94, 92.

68 ***Number of taxless families in 1970:*** 1970 SOI (Preliminary), p. 24, col. 1 (comparing all returns with taxable returns); also press release of Rep. Henry Reuss of Wisconsin, May 7, 1972.

68 ***Three taxless families:*** 1970 SOI (Preliminary), p. 24, col. 1; dividend information at p. 32, cols. 32, 33 (comparing all returns with taxable returns).

68 ***Senatorial pronunciamento:*** 1969 SFC Report, p. 112.

69 ***Groups 1, 2, 3:*** Press release by Rep. Henry Reuss of Wisconsin, May 7, 1972.

69 ***Ralph Senters:*** Washington *Post*, May 1, 1972, p A1.

70 ***Amount of "tax-favored" income:*** Reuss press release, May 7, 1972 (see p. 69, above). Reuss differentiated between "non-favored" income (such as corporate dividends) and "tax-favored" income (such as from capital gains, or from oil ventures qualifying for percentage depletion deductions, etc.). According to Reuss, families in Group 3, for example, averaged about $1 million in "non-favored" income and about $703,750 in "tax-favored" income.

70 (Footnote) ***Senate Finance favored 5% minimum tax:*** 1969 SFC Report, p. 112.

71 ***$30,000 exemption from "minimum tax":*** IRC, Sec. 56(a)(1).

71 ***Exemption for capital gains on charitable gifts:*** IRC, Sec. 170(e); see also Sec. 17(b)(1)(D) and (E).

71 ***Average $50,000 income from tax-free bonds:*** based on Pechman-Okner data.

73 ***December 31, 1970 law:*** PL 91-614, Sec. 501(a).

73–4 ***Sen. Nelson re "love tap":*** 118 CR S4289 (Daily), Mar. 21, 1972.

75 ***Mr. C:*** Tr. 92.

75 ***Tax advantages from "double-dip":*** Tr. 147.

77 ***$100 million saving for 30,000 executives:*** 1969 SFC Report, p. 333.

77 ***Congress's reasoning:*** 1969 HWM Report, pp. 208–9; also "General Explanation of the Tax Reform Act of 1969" (Joint Committee on Internal Revenue Taxation), pp. 224–5.

77 ***Harold Geneen salary-plus-bonus: Gallagher President's Report,*** Apr. 19, 1972.

78 ***Average salary of 215 executives:*** Lent and Menge, "The Importance of Restricted Stock Options in Executive Compensation" (mimeographed, Amos Tuck School, Dartmouth College, 1962), p. 8.

78–9 ***IBM stock options:*** 1962 IBM Proxy Statement, p. 10; 1971 IBM Proxy Statement, pp. 24–5.

78–9 ***Thomas J. Watson salary:*** IBM Proxy Statements, 1966–70.

79 ***Harold Geneen stock options:*** ITT Proxy Statement, Mar. 23, 1971.

79 (Footnote) ***Geneen's salary/bonus increase:*** ITT 1972 Proxy Statement.

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79 *Confidential letter: Gallagher President's Report,* Apr. 19, 1972.
80 *General Motors stock options:* 1971 GM Proxy Statement, pp. 9, 45.
80 *Continental Airlines stock option:* 32nd Annual Report, Corporate Democracy, Inc. (published by Lewis D. and John G. Gilbert, 1971), p. 144.
81 *"The Supreme Court has held":* Commissioner v. LoBue, 351 U.S. 243 (1956), in which the Court "held that the 'proprietary interest' test had no basis and that all employee options resulted in taxable compensation" (1963 HWM 466).
83 *Overall stock prices, 1950–63:* 1963 HWM 482.
83 *38 matched pairs:* 1953 HWM 483.
83 *Sen. Albert Gore:* 1961 SFC Stock Option Hearings, p. 96.
86 *Allied Chemical, John Connor; Xerox; Ford: Dun's,* June 1971, p. 40.
87 *"Cornucopia of lesser perquisites": Dun's,* Apr. 1972, p. 120.
89 *10 separate steps required: Dun's,* Apr. 1972, p. 50.
89 *110 out of 120 corporations: Dun's,* Apr. 1972, pp. 44–9.
89 *Ownership of corporate stock: Inequality and Poverty,* ed. by Edward C. Budd (W. W. Norton, 1967), p. xxii.
90 *Distribution of benefits from dividend exclusion:* Based on Pechman-Okner data.
91 *Eisenhower re 100 taxes on an egg:* Jacksonville, Fla., Sept. 2, 1952; also Warsaw, Ind., July 15, 1962.
92 *Reps. Daniel Reed and Joseph Martin:* 96 CR 9238, 9386 (1950).
92 *Dividends received in 1970:* 1970 SOI (Preliminary), p. 30, col. 33.

5. The Great Capital Gains Trial

94 *Capital gains "tax welfare":* Pechman-Okner, Table A-3, col. 2 divided by Table 8, col. 1.
95 *Who receives capital gains:* 1969 SOI, p. 40, col. 4.
96 *$6 million capital gains on $9 million income:* 1963 SFC 279.
96 *Percent of group receiving capital gains:* 1969 SOI, p. 40, col. 3 divided by p. 9, col. 6.
96 *Percent of incomes from capital gains:* 1969 SOI, p. 40, col. 4; p. 9, col. 8.
98 *Mr. C:* Tr. 92.
99 *Charles Stewart Mott wealth: Fortune,* May 1968, p. 156.
100 *$10 billion escapes tax; $4½ billion revenue loss:* Pechman-Okner data; revenue loss in Table A-4, col. 2.
100 *Ailsa Mellon Bruce: Wall Street Journal,* Dec. 24, 1971.
101 *Nixon veto of education bill: Congressional Quarterly Almanac,* 1970, p. 226.
101 *Super-rich paying just 25%:* 1963 SFC 279.
102 *Million-and-over families paying 32%:* See note on table, p. 11.
102 *Capital gains the biggest single factor:* This is graphically portrayed in Pechman-Okner, Fig. 1, which shows on a chart the elements, at various income levels, that account for the difference between what the legal tax rates call for a person to pay and what he actually *does* pay. I have often called this "the whale chart," because as family income rises, the gap between "theory" and "practice" caused by capital gains yawns wider and wider, like the mouth of a whale.

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103 *Situation No. 1:* Compare IRC Sec. 1221(3) with IRC Sec. 1235. In 1964, Congress permitted authors and others whose income comes in uneven "spurts" to average out several years' income, but they are still denied capital gains treatment of that income.

103 *Congress's reasons for capital gains for inventors:* S. Rep. 2375, 81-2, p. 44 (1950).

105 *General counsel of Ford:* William T. Gossett; from *Fortune*, Dec. 1958, p. 202.

107 *Tax code on "collapsibles":* IRC Sec. 341.

107 *Tax code on "spin-offs":* IRC Sec. 355. See also Regs. 1.355-1.

108–9 *Capital gains tax history: National Tax Journal*, 1949, pp. 12 ff.

112 *51% tax on $25,000 gain taxed in a single year:* the gain would make his taxable income for that year $65,000, on which his tax would come to $24,970—$12,830 more than his tax would have been without the gain. The additional $12,830 of tax is 51.3% of the $25,000 capital gain.

114 *Three Harvard Business School professors:* Walter W. Heller, at 1955 JCER 389, summarizing findings of Butters, Thompson and Bollinger, *Effects of Taxation: Investments by Individuals* (Harvard University, 1953).

115 *Joseph Pechman on effects of 1969 capital gains tax increase:* New York *Times*, July 5, 1962.

116 *Corporations derived only 1.5% of capital from stock issues:* Economic Report of the President, Jan. 1972, p. 284. Over the decade of the Sixties, corporations derived just $12.8 billion out of $824.9 billion of capital from stocks.

118 *Brandeis quote:* By Merle Miller at 1958 HWM 2321.

6. Your Wife May Be Worth a Million

119–20 *Figures of wife's worth:* Calculated in accordance with the method described on pp. 121–2, based on 1973 tax rates. All calculations assume a standard deduction of either $1,300 or 15% (whichever is more favorable) on incomes up to $25,000; itemized deductions of 18% of income (which is the approximate actual average) on incomes greater than $25,000. For the sake of simplicity and clarity, the calculations omit the effect of the added $750 exemption the new bride would bring.

120 *Three million men with incomes under $3,000:* 1970 SOI, p. 24, col. 9.

120 *$21.5 billion cost of marital income-splitting:* Pechman-Okner, Table A-1. Note that this assumes that the advantages now enjoyed by heads-of-household as well as married joint-return filers (as compared with single people) would be ended. This estimate also is based on this being the first change made in the tax law (i.e., the revenue effect has been calculated assuming that no other change in the law, such as abolition of the preferential capital gains tax rate, has taken place).

120 *97% of benefits went to top 5%:* Eisenstein, p. 45; Treasury Dept. release, Apr. 14, 1948.

121 *Couple A gets 97 times benefits of Couple B:* A couple with $150,000 income enjoys a tax saving of $9,567 compared with a saving of just $99 for a couple taking in $7,500.

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123 *Ludwig S. Hellborn:* 1951 National Tax Proceedings 310–14.

124 *Table of "tax bliss":* Percentage figure refers to percent by which single person's tax is reduced by virtue of his marriage.

125 *Congressional Democrats of the day:* H. Rep. 1274, 80-2, p. 67 (1948).

125 *Percent of income-splitting benefits to various income groups:* Pechman-Okner, Table A-1.

127 *Three and a half million heads-of-household:* 1970 SOI, p. 26, col. 41.

130 *Nixon Administration and value added tax:* New York *Times*, Feb. 1, 1972, p. 1.

131 *Distribution of income-splitting benefits:* Pechman-Okner, Table A-1.

131 *Paysoff Tinkoff:* Tinkoff v. Commissioner, 120 F.2d 564 (1941).

132 *Stanback Brothers:* T. M. Stanback et al. v. Commissioner, 183 F.2d 889 (1950).

132 *Growth in partnership tax returns:* 96 CR 14106 (1950).

132 *Questions re LaSalle Livestock Company:* Redd v. Commissioner, 5 TCM 528 (1946), Transcript, p. 63.

132–3 *Pre- and post-1951 rules on family partnerships:* Commissioner v. Culbertson, 337 U.S. 733 (1949); 96 CR 19677–8 (1950).

133 *Safeguards against income-shifting:* The father must receive a reasonable salary for the services he performs for the partnership, and the rate of return on his contribution of capital must be approximately the same as that for other family partners.

133 *Uneeda Doll Company:* Sklarsky v. U.S., 153 F. Supp. 796 (1957).

134 *West Coast Construction Company:* Walberg v. Smyth, 142 F. Supp. 293 (1956).

7. The "Treasury Papers" Episode or *A Dollar Lost Is a Dollar Spent*

135 (Footnote) *Stanley Surrey "brainchildren":* See Prof. Surrey's testimony at 1972 JCER Subsidy Hearings, pp. 43–58; his paper, "Tax Subsidies as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures," at 1972 JCER Subsidy Papers, pp. 74–105 (based in part on a similar article in 83 *Harvard Law Review* 705 (1970)); and see especially his "Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Government Assistance," at 84 *Harvard Law Review* 352 (Dec. 1970).

143 *66 cents v. $6,000 a year in tax benefits to home owners:* Pechman-Okner, Table A-2, col. 5 divided by Table 8, col. 1. A similar conclusion was reached by Columbia law professor Paul M. Dodyk, who found that tax benefits to home owners ranged from 83 cents a year for the poorest families to $7,285 a year for the wealthiest. (See Dodyk, "The Tax Reform Act of 1969 and the Poor," 71 *Columbia Law Review* 758, May 1971, at 784.)

143 *$10 billion revenue loss from all tax favors to home owners:* Pechman-Okner, Table A-2, col. 5. Note that this includes the cost of the failure to tax the "imputed" rental income of home

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owners, as well as the cost of home owner deductions for taxes and mortgage interest.

144 *Six times direct Federal housing assistance:* Special Analyses, Budget, FY 1973, pp. 202–3.

145 *1968 oil depletion study: Tax Reform Studies and Proposals,* U.S. Treasury Dept. (joint publication of Senate Finance Committee and House Ways and Means Committee, March 11, 1969, Part 4), described as "the final report of a study of the potential effects of changes in the special Federal tax provisions relating to the oil and gas industry on the level of domestic petroleum reserves" (p. ii). The study is summarized at Tr. 426–8.

146 *"Tax expenditures" one-third Federal budget:* The $77 billion is what the Pechman-Okner computer study concluded would be collected under a comprehensive tax system, over and above 1972 Federal tax collections. That does not include the effect of any tax preferences to corporations. The one-third figure is based on the 1972 Federal expenditures of $236.6 billion (Budget, FY 1973, p. 15).

146 *"Tax expenditure" concept originated with Stanley Surrey:* 1968 Annual Report of the Secretary of the Treasury, pp. 326–40.

147 *Tax credits and deductions for political contributions:* IRC Secs. 41 and 642(a)(3) (tax credit) and Sec. 218 (deduction).

148 *One-fourth of population too poor to use political tax credit:* Statement of Stanley Surrey, 1972 JCER Subsidy Hearings, p. 51.

148 *Purpose of personal exemption to meet "minimum living costs":* Appendix to 1947 Treasury Dept. study, "Function and Purpose of Individual Income Tax Exemptions," quoted at S. Rep. 91-552, 91-1, p. 343 (1969).

149 *John Connally told Congress:* 1971 HWM 10.

150 Wall Street Journal *on subsidies:* Editorial, Sept. 30, 1971, p. 22.

150 *New York office building vacancies: Fortune,* Feb. 1971, p. 118.

151 *How DISC's might be used to avoid estate and gift taxes:* One such scheme might go like this: Mr. A, the sole owner of Company A (which does a lively export business), rather than have his company form a DISC, arranges for his children to do so—not an arduous feat for them, since, as you will see on p. 271, a DISC can be merely a "paper" company, and all the children have to put up, among them, is $2,500. The children's DISC proceeds to enter into an agreement with Papa's company whereby a portion of Company A's export profits will be channeled into the DISC. Half of *those* profits will, under the DISC law, be subject to *no* immediate tax; the other half will be taxed to the children (who are likely to be in low tax brackets) rather than at Company A's 48% tax rate. The estate tax saving comes about because some of the export profits that had been going to Company A have been diverted to the DISC, thus producing a less rosy profit picture, thus lessening the value that IRS places on Company A when Mr. A expires, thus lessening his estate tax. While there is no evidence that such a scheme has actually been tried, the possibilities of using the DISC for estate tax avoidance have stirred Mr. Robert L. Weiss to write an entire article about it (see "DISC: An International Dimension for Estates," *Trusts and Estates,* Aug. 1972, pp. 606–9.

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151 *1968 Treasury study of real-estate "tax subsidy":* Tr. 438–48, especially at p. 442.

151 *Portion of low-income housing built in inner city:* Robert H. Kuehn of Housing Economics (a Cambridge, Mass., consulting firm), quoted by Associated Press, Oct. 25, 1971.

152 *Proposals, fund cuts for rent supplements: 1969 Congressional Quarterly Almanac,* p. 323.

152 *Builder-developers making 400% profit:* Associated Press series of articles, beginning Oct. 25, 1971, citing "government figures."

153 (Footnote) *Rapid write-offs for antipollution facilities:* IRC Sec. 169.

154 *Stanley Surrey quote:* 1972 JCER Subsidy Hearings, p. 49.

154 *Nixon vetoes: day-care centers:* Sen. Bill No. 2007, Dec. 9, 1971; *hospitals and medical schools:* Sen. Bill No. 3418, Dec. 26, 1970.

155–8 *"Illustrative Tax Expenditure Budget":* 1972 JCER Subsidy Hearings, pp. 55–8.

158 (Footnote) *First "Tax Expenditure Budget":* 1968 Secretary of the Treasury Annual Report, pp. 326–40.

8. A Dollar Delayed Can Be Many Dollars Saved

161 *Corporations expect a return of at least 10–12%:* Pechman, *Tax Policy,* p. 307, showing that the before-tax rate of return on corporate equity capital in the decade 1957–67 ranged from 12.2% to 19.5%. Return on total capital ranged from 10.7% to 16.1%.

162 *$61,000 value of deferral on $52,500:* assumes an 8% rate of return. A 12% return would make the deferral value about $111,000.

163 *Deferral is "the name of the game":* Quoted by Stanley Surrey, Washington *Post,* Sept. 19, 1971.

9. Running for Shelter

165 *Taxpayers J and K:* Tr. 94.

171 *Prof. Charles Davenport:* Letter to the author.

173 *Profit above "book value" taxed at regular rates:* This occurs because of a feature of the tax law, initially enacted in 1964, called "recapture." Under a stricter version passed in 1969, all of the profits above "book" or "depreciated" value at the time of sale of *non*residential property are denied capital gains treatment and are taxed at regular income tax rates. For residential property, the "recapture" (i.e., denial of capital gains treatment) is on a sliding scale, declining gradually as times goes on. Thus, the longer an investor holds on to the property, the greater his capital gain advantage. For government-subsidized housing, the "recapture" disappears more quickly than on other kinds of housing. IRC Sec. 167(e) and 1250(a).

174 Architectural Forum: "The Role of Depreciation," Apr. 1955, cited at 1962 SFC 354.

174 *One real-estate expert:* Mark H. Johnson, 1961 HWM 1247.

176 *Manuel D. Mayerson:* 47 TC 340 (1966).

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176–7 *Deductions permitted on borrowed element of real estate:* IRC Secs. 1012. 1016; see Crane v. Commissioner, 331 U.S. 1 (1947).

177 *Refinancing of real estate:* See Woodsan Associates v. Commissioner, 198 F.2d 357, 2nd Circuit (1952).

178 (Footnote) *Promoters believe challenges can be fended off:* See Martin Gage, *Journal of Taxation*, Nov. 1972, p. 312.

179–81 *Ocean Towers project:* Preliminary prospectus, dated Nov. 8, 1971, for Ocean Towers, Ltd.

182 *Treatment as partnership, not corporation; IRS regulations permit corporate advantages:* Rev. Proc. 72-13 (1972-2 IRB, p. 26); Regs. Sec. 301.7701-2.

183 *1960 REIT law:* IRC Secs. 856–8.

184 *Skirting of bank lending restrictions:* For examples, see Helvering v. F. & R. Lazarus & Co., 308 U.S. 252 (1939) and Paul W. Prenzel, 22 TCM 1391 (1963).

185 *Dan Throop Smith: Federal Tax Reform*, p. 157, quoted at Tr. 446n.

187 *"I'm a rich cowhand": Wall Street Journal*, Mar. 19, 1969.

188 *Taxpayer K:* Tr. 94.

188 *2,400 affluent "tax farmers":* Tr. 158.

190 *Cattle eligible for investment credit:* IRC 48(a)(6).

190 *Top-bracket notables: Rodgers, Marx, Harriman, Rockefeller: Wall Street Journal*, Aug. 19, 1968; *Jack Benny: Time*, Aug. 30, 1968.

190–1 *Musician-conductor, chain link fence manufacturer:* 1963 HWM 456, 457.

191 *Pamphlet in ersatz Western lingo:* Prentice-Hall Executives' Tax Report, Feb. 4, 1963.

191 *Black Watch Farms: Wall Street Journal*, Sept. 21, 1970, and Apr. 6, 1971.

195 *1969, 1970 rules re citrus and almond groves:* IRC 278 (citrus); PL 91-680 (almond groves).

195 *Cash accounting for farmers:* Regs. Sec. 1.61-4 (as exception to Regs. Sec. 1.446-1(c)(2)(i), providing that, as a general rule, accrual accounting must be used where the taxpayer keeps inventories of goods on hand.

197 *U.S. Dept. of Agriculture study:* cited in "Lure of the Land," *Wall Street Journal*, Aug. 19, 1968.

197 *Sen. Metcalf bill:* S. 500, 91st Cong., 1st Sess.

197 (Footnote) *Taxpayer J:* Tr. 94.

198 *Charles Davenport on the 1969 "reform":* "Farm Losses Under the Tax Reform Act of 1969: Keepin' 'em Happy Down on the Farm," 12 *Boston College Industrial and Commercial Law Review* 319 (Feb. 1971), at 349–50.

198 *Newsweek description:* Aug. 19, 1968, p. 56.

198 *1969 farm "reforms" "not as severe as anticipated":* "Tax Sheltered Investments," Arthur Andersen & Co., May 1970, p. 29.

199 *Securities and Exchange Commission oil shelter prospectuses: Oil Daily*, Aug. 29, 1969, p. 4.

200 *Oil Daily:* Aug. 29, 1969, p. 4.

201 (Footnote) *IRS restrictions on oil-drilling funds:* See Rev. Proc. 72-13, 1972-2 IRB, p. 26.

203 New Yorker *account:* Oct. 17, 1970.

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204 *Fast write-off for railroad cars:* IRC Sec. 184.

204 *Arthur Andersen & Co. pamphlet:* "Tax Sheltered Investments," May 1970, p. 28.

205 *Donatelli, Rudolph and Schoen: The Washingtonian,* Dec. 1971, p. 115.

10. "Tax Welfare" for the Corporate Giants

206 *$300 million in 1962-69 "gift":* This was the estimated benefit to General Motors from the investment tax credit when it was in effect during those years. 1971 SFC 197.

206 *$250 million "new gift":* Estimated 10-year tax saving to GM from ADR. For assumptions underlying this estimate, see note for p. 220.

207 *Sen. Nelson on corporate tax cut:* 118 CR S4287 (Daily), Mar. 21, 1972.

207 *Goldman Sachs analysis: Wall Street Journal,* Aug. 2, 1972, p. 1.

208 *Reduction in corporate tax burden:* Pechman, *Federal Tax Policy,* p. 118.

208 *Decline in share of Federal revenues from corporations:* Economic Report of the President, Jan. 1972, p. 270.

208 *100 largest corporations paid less than smaller firms:* 118 CR H6707 (Daily), July 19, 1972.

209 *Profits, taxes (or refunds) and dividends of particular corporations:* 118 CR H6713–16 (Daily), July 19, 1972. Figures on profits and taxes (or refunds) were developed by Rep. Charles Vanik of Ohio, with the help of his staff and the staff of Congress's Joint Committee on the Economic Report, "aided by expert certified public accountants." The data were "based entirely on information available to the general public, including 10-K [financial reporting] reports, registration statements and prospectuses filed with the Securities and Exchange Commission, as well as annual reports to shareholders and . . . to the Interstate Commerce Commission." Dividends-paid figures are from *Moody's Industrial Manual* and *Moody's Public Utility Manual.*

209 Business Week *re Western Union:* Apr. 15, 1972.

210 *IRS statistics on 1.7 million corporations:* Washington *Daily News,* Apr. 7, 1972, p. 3.

210 *ITT taxes:* Figures derived from pp. 11, 56 of Form 10-K Annual Report submitted to the Securities and Exchange Commission for fiscal year ended Dec. 31, 1971.

210 *Texaco taxes: Oil Week,* Aug. 21, 1972.

211 *American Electric Power Co.:* 118 CR H6715 (Daily), July 19, 1972.

212 *Consolidated Edison:* 118 CR H6715 (Daily), July 19, 1972.

212 *Rep. Vanik on "wedding clothes" v. "rags":* 118 CR H6708 (Daily), July 19, 1972.

212–13 *Difference between "tax" and "book" profits:* 1966 Corporate SOI 112, 113.

213 *One Congressional reform proposal:* 117 CR H11058, Nov. 19, 1971.

213 *Dan Throop Smith: Federal Tax Reform,* p. 182.

213 *$52 billion cost of ITC over 10 years:* assumes annual 7% increase in corporate investment in machinery and equipment that qualifies for ITC.

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214 ***Tax savings from investment credit for General Motors, U.S. Steel:*** 1971 SFC 197.

214 ***Congress on ITC "combating inflation":*** 1971 HWM Report, p. 6.

215 ***57% of ITC benefits to 260 corporations:*** 118 CR H6709 (Daily), July 19, 1972, citing a Library of Congress report on corporations using the ITC in 1965.

215 ***Original ITC proposed by Kennedy Administration:*** 1961 HWM 20–48 (May 3, 1961); 1962 SFC 80–82, 87.

215–16 ***Vanik on employment history of top 100 corporations (and lowest 100 corporations—see footnote):*** 118 CR H6708 (Daily), July 19, 1972.

216 ***Estimate of $6–$12,000 per job:*** 1971 HWM 154–5.

216 ***Two Senatorial critics:*** Sens. Paul Douglas of Illinois and Albert Gore of Tennessee, 1962 SFC Report, p. 398.

216 ***1971 ITC applied to motion pictures:*** See Walt Disney Productions v. U.S., 327 F. Supp. 189 (1971).

218 ***Tax benefits to utility companies from ITC:*** 1962 SFC 87.

218–19 ***Congress forbade "pass-through" of ITC benefits:*** IRC Sec. 46(c)(3) and 46(e).

218 ***$13 billion cost of 1962–69 ITC:*** 1967 Corporate SOI 171; 1968 Source Book; 1969 Corporate SOI (Preliminary).

219 ***Protest by Sens. Gore and Douglas:*** 1962 SFC Report, p. 398.

219 ***Statement by Hewlett-Packard secretary-treasurer: Business Week,*** Apr. 29, 1961, p. 30.

219 ***By James M. Roche:*** Statement on New Economic Program of President Nixon, Aug. 31, 1971, quoted at JCER Hearing, Sept. 20, 1971, p. 523.

219 ***Estimate of $300 million benefit to IBM:*** Assumes that 30% of the approximately $2 billion of capital spending listed in the company's annual report qualifies for ADR treatment. Also assumes an annual growth rate of capital investment of 5%.

220 ***Sen. Bible estimate:*** 117 CR 85372, Apr. 22, 1971.

221 ***Commerce Clearing House example:*** 1971 Depreciation Guide, No. 40, Aug. 17, 1971, p. 58.

222 ***Price, Waterhouse testimony re Reserve Ratio Test:*** Testimony of J. D. Coughlan at Treasury hearing on ADR, May 3, 1971, typed transcript, p. 543.

223 ***View espoused by Treasury Dept.:*** 116 CR E6955, July 23, 1970.

223–4 ***1962 Treasury Dept. survey, "guidelines" fixed at 70% level:*** Described in Appendix 3, letter from Prof. Martin David to IRS Commissioner, Apr. 1, 1971.

224 ***Administration admits variations in equipment replacement practices:*** "Tax Depreciation Policy Options," in which the Treasury talked of the "admittedly great diversity of replacement policies among firms in the same industry and the still greater diversity between industries." See 116 CR E6966, July 23, 1970.

224 ***Task Force on Business Taxation:*** White House press release of Sept. 22, 1969, in which "the President today announced" the Task Force and its membership, noting that "the first meeting of the task force was held on Saturday, September 13"—nine days before the White House first made public the existence and the membership of the group. The former Nixon law partner chairing the group was John H. Alexander, of the firm of Mudge, Rose, Guthrie

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and Alexander (formerly Nixon, Mudge, Rose, etc.). The Connally law partner was Marvin K. Collie, of the firm of Vinson, Elkins, Searls and Connally of Houston, Texas.

225–6 *Arguments against ADR:* Letters to IRS Commissioner by Prof. Martin David, University of Wisconsin, Apr. 1, 1971; Prof. Robert Eisner of Northwestern University, Apr. 12, 1971; and Prof. Boris I. Bittker, Yale University. Released by Taxation with Representation, Arlington, Va.

225 *Assistant Treasury Secretary Cohen:* Press conference, Jan. 11, 1971, quoted by Prof. Eisner, p. 3.

226 *Prof. Robert Eisner:* Letter to IRS Commissioner, Apr. 12, 1971, p. 7 (released by Taxation with Representation, Arlington, Va.).

226 *John Connally quote:* 1971 HWM 10.

226–7 *Proportion of profits and sales going to largest corporations:* Rep. Charles Vanik of Ohio at 118 CR H6709 (Daily), July 19, 1972.

227 *Estimate re share of ADR benefits that will go to largest corporations:* Sen. Alan Bible, 117 CR S5372, Apr. 22, 1971.

11. Ah, To Be an Oilman

228 *H. L. Hunt income:* New York *Times Magazine*, Oct. 20, 1957, p. 38.

228 *Jean Paul Getty income: Esquire*, Oct. 1970, p. 146.

228 *Getty re "a billion dollars": Newsweek*, July 15, 1963, p. 48.

229 *Treasury Study of Mr. D and Mr. B:* 109 CR 24399, Dec. 12, 1963.

229–30 *Oil company profits and taxes: Oil Week*, Aug. 21, 1972, and Aug. 5, 1968. (*Footnote to second table, p. 230, re portion of taxes going to states and to foreign governments:* a study by the Petroleum Industry Foundation, Inc., covering the years 1967–70, said that the taxes by 18 U.S. oil corporations to states and localities amounted to $109 million, compared with "foreign income taxes" in those same years of $3.5 *billion*.)

231 *Total depletion cost of $140 billion:* Rep. Charles Vanik, cited at Dugger, p. 85.

231 *$1.6 billion revenue loss:* Press release re Federal subsidies by Joint Committee on the Economic Report, June 4, 1971, p. 2.

231 *Comparative spending for Head Start, etc.:* Special Analyses, Budget, FY 1973, pp. 118, 121, 134, 152.

232 *$5.5 billion of depletion deductions:* Preliminary Corporation SOI, 1968, p. 16, col. 1. Excludes depletion deductions listed for timber industry, which are almost entirely cost rather than percentage depletion.

232 *Depletion for 110 other minerals:* IRC Sec. 613.

233 *Hugh Roy Cullen:* New York *Times Magazine*, Oct. 20, 1957; *Holiday*, Feb. 1957, p. 55.

233–4 *Murchison, Richardson, Young: Holiday*, Feb. 1957, p. 56.

234 *Dr. Martin Miller, Michael Benedum: Fortune*, Nov. 1957, p. 176.

234 *Industrialist confides to* Wall Street Journal: Engler, p. 158.

234 *Tax joys summarized by Houston oil expert:* 105 CR 11915 (1959).

235 *Three advantages of oil:* Based on analysis by Louis Eisenstein. See Eisenstein, Ch. 6.

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236 *"Intangibles" more powerful incentive than depletion:* J. P. Jackson, "Tax Planning before Drilling," 27 *Tulane Law Review* 21 (1952).

236 *Corporation depletion and "intangible" deductions:* "Depletion Deductions" (1960 IRS publication), p. 16, col. 1.

237 *Depletion deductions as multiple of cost:* 118 CR S4288 (Daily), Mar. 21, 1972; 1 Compendium 296.

237–9 *Technical study commissioned by U.S. Treasury Dept.:* See note on p. 145, above. Study is summarized at Tr. 426–8.

238 *Depletion deductions by Aramco:* Engler, p. 225.

238 *$5.8 billion profits from Mid-East operations:* Washington *Post*, Feb. 20, 1972, p. G1.

239 *Jersey Standard, Gulf taxes to U.S., foreign governments:* Dugger, p. 84.

240 *Treasury would have been $4½ billion richer:* Based on what the two oil companies would have paid the U.S. if they had continued paying at the same rate of the late Forties and early Fifties, compared with what they *did* pay after the transformation of the "royalties" into "taxes."

240 *Sen. Mike Monroney:* 105 CR 11914 (1959).

240 (Footnote) *Special 33% tax rate:* IRC Sec. 632.

242 *Senate study revealed defects of "discovery depletion":* 67 CR 3768, 3772, 3777 (1926).

242 *History of 27½% depletion allowance:* 30 *Indiana Law Journal* 406; 67 CR 3762, 3776–8 (1926).

243 *Corporate depletion deductions:* 1946 Corporate SOI, p. 8; 1956–57 Corporate SOI, p. 6; 1968 Corporate SOI (Preliminary), p. 16.

243 *1945 court ruling on "capital outlays":* F.H.E. Oil Co. v. Commissioner, 150 F.2d 857 (1945).

243 *Congress directed IRS:* IRC Sec. 263(c).

243 *Congress bars depletion to "soil, sod, dirt," etc.:* IRC Sec. 613(b)(7).

243 *Depletion claimed on underground water and steam:* Marvin Shurbet v. U.S., 63-2 USTC, para. 9528 (1963). Courts granted depletion (on a par with natural gas) to geothermal steam, which a dissenting Tax Court judge labeled "depletion run riot." Reich v. Commissioner, 52 TC 700, at 716 (Raum, J. dissenting). Depletion for underground steam was upheld at 454 F.2d 1157 (1972).

245 *$1.18 per barrel v. 80 cents:* "The Oil Depletion Issue" (publication of the Petroleum Industry Research Foundation, Inc.), p. 96 (1959).

245–6 *Supreme Court rulings on depletion:* U.S. v. Dakota-Montana Oil Co., 288 U.S. 459, 462 (1933); F.H.E. Oil Co. v. Commissioner, 147 F.2d 1002, 1003 (1945) and 150 F.2d 857, 858 (5th Cir. 1945).

246 *Oil companies keep two sets of books:* 1953 HWM 11996.

246 *1964 discrepancy between "book" and "tax" profits:* Dugger, p. 85.

246 *1966 discrepancy:* 1966 Corporate SOI, p. 112, cols. 6, 11.

246 Dun's Review *on business failure rates:* from *Dun's Review and Modern Industry*, Mar. 1955, pp. 33–5.

248 *". . . one of your most ardent Senatorial supporters":* Sen. Monroney of Oklahoma, 97 CR 11726 (1951).

248 *Drilling record of five largest companies: Oil and Gas Journal*, Vol. 57, No. 16, cited at 2 Compendium 975.

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249 *Congress's distinction re 35 minerals:* IRC Sec. 613(b) (2) (B).

12. The World-Wide Game of "Beat the Tax Collector"

253 *Profits and taxes of Standard of Ohio:* 118 CR 4173 (Daily), Apr. 24, 1972.

254 *Taxes of ITT:* Derived from Form 10-K financial report submitted by ITT to Securities and Exchange Commission for fiscal year ending Dec. 31, 1971, at pp. 11, 36.

254 *240% growth in overseas investment: Newsweek,* Apr. 24, 1972, p. 66.

254 *Result of $150 billion output, $17.5 billion profits:* Musgrave, p. 176.

254 *Firms canvassed by* Business International: *BI,* June 16, 1972, pp. 201–22.

255 *Growth in taxes paid to foreign governments:* 1968 Corporate SOI, Table 22; Musgrave, p. 176.

255 *Fidelity Bank of Philadelphia Nassau "branch": Wall Street Journal,* July 5, 1972, p. 26.

256 *Liechtenstein's various "populations": Fortune,* Feb. 1969, p. 168.

256 *Daniel Ludwig's tax-haven companies; Barracuda Tanker Corporation: Fortune,* Feb. 1969, pp. 96, 178.

256 *"Captive insurance companies" in Bermuda: Wall Street Journal,* May 26, 1971, p. 34.

256 (Footnote) *Fidel Goetz and Penn Central:* New York *Times,* Apr. 9, 1972, pp. 1, 48.

257 *ITT sale to American fund via foreign bank:* 118 CR 6709 (Daily), July 19, 1972.

257–8 Wall Street Journal *on New Hebrides:* Oct. 13, 1972, pp. 1, 18.

258–60 *U.S. Gypsum and its corporate offspring:* U.S. Gypsum Co. v. U.S., 304 F. Supp. 627 (1969). Those readers interested in a pictorialization of the "falling gypsum rock" caper might be moved to look up the court's opinion in that case, for the judge was evidently so taken with the artist's rendering of the situation, submitted to him by Justice Department attorneys, that he took the unusual step of having the sketch itself included as part of his decision.

261 *Foreign tax credit cuts U.S. collections by $3 billion:* Musgrave, p. 187.

261 *Method of arriving at $240 tax to U.S.:* On the $1,000 of net profit made in Canada, there is a $500 corporate tax that must be paid to Canada, leaving $500 subject to U.S. tax. At the American corporate rate of 48%, that makes the U.S. tax $240 (48% of $500). In addition, Canada imposes a $75 tax on the $500 "dividend" by the Canadian subsidiary. Thus, the total tax paid on the $1,000 of profit comes to $575 to Canada plus $240 to the U.S., for a total of $815.

263 *Costs of Advantages One and Two:* Musgrave, pp. 187, 192.

263 (Footnote) *95% ownership of four-fifths of overseas assets:* Musgrave, Table 7, p. 199.

265 *Option of choosing world-wide method of calculation:* IRC Sec. 904(a).

265 *Estimated quarter-billion-dollar cost:* Memorandum of Office of International Tax Affairs, U.S. Treasury Dept., Jan. 14, 1972, p. 3.

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265 *Proposal by some Congressional reformers:* Sec. 309 of H.R. 11058, by Rep. James C. Corman of California, 117 CR H9212, Oct. 5, 1971.

265 *Hammond Organ Co.:* Hammond Organ Western Export Corp., 327 F.2d 965 (1964).

267 *Pittsburgh Plate Glass Co.:* PPG Industries, 55 TC 928 (1971).

268 *Kennedy calls for end to tax havens:* "Public Papers of the Presidents," 1969, p. 296 (Apr. 20, 1961).

269 *70–30 method of "un-tainting" foreign profits:* IRC Sec. 954(b)(3).

269 *Explanation of "minimum distribution" formula:* If a company arranges the channeling of its overseas profits and the repatriation of a precisely calculated portion of those profits in such a way that the U.S.-plus-foreign taxes amount to 90% of what the full U.S. tax would have been, then no further tax is required on those profits. Result: the company has been able to realize, in effect, a 10% tax saving.

269 *$30 million saving to Standard of New Jersey:* Based on a *Fortune* estimate that 52% of the firm's profits that year were earned overseas.

269 (Footnote) Fortune *on obstacles to small-firm use of "minimum distribution" escape hatch: Fortune,* Feb. 1969, p. 96.

270 *Arrangement into "chains," "groups" and "single first-tiers":* IRC Sec. 963(c)(2); Regs. 1.963 1(a)(1).

270 *1969 provision to curb use of fictional depletion allowance:* IRC Sec. 901(e).

271 *Formal complaints lodged against DISC:* See Washington *Post,* July 4, 1972; also "Daily Executives' Report" of Bureau of National Affairs, July 5, 1972, pp. G1, G2.

271 *Treasury ruling on DISC as paper entity:* Rev. Rul. 72-166.

272 *After-the-fact adjustment of profit allocation:* Treasury Dept. booklet, "DISC: A Handbook for Exporters," Jan. 24, 1972, p. 25. Many observers have been struck by the vigor with which the Treasury Dept. (usually considered the protector and conserver of the taxpayers' dollars) actively promoted and encouraged business tax avoidance through the DISC. The above-mentioned "handbook" is replete with enticing invitations to make the most of the DISC; and in 1972 Treasury officials were on the speaking circuit, "selling" the DISC to business groups—a function ordinarily associated with "tax shelter" promoters who receive an 8% commission for arranging inroads into the U.S. Treasury by "shelter"-seeking taxpayers.

273 *Prediction of concentration of DISC benefits:* 117 CR S5377 (Daily), Apr. 22, 1971.

274 Wall Street Journal *labels DISC a "gimmick":* Editorial, Sept. 30, 1971, p. 22.

274 *Shipping company profits entirely "untainted":* IRC Sec. 955(c)(2).

275 *Shipping companies exempt from U.S. taxes even if plying American ports:* IRC Sec. 872(b)(1).

275 *Financial saga of "John Smith":* "Tax Planning for a Foreign Flag Shipping Company," Prentice-Hall Report Bulletin No. 9, July 6, 1972.

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275 *No tax on interest-bearing U.S. bank time deposits:* IRC Secs. 861 (a) (1) (A) and 861 (c).

276 *Shipping companies classified as LDCC's:* IRC Sec. 1248 (d) (3).

276–7 *Description of shipping billionaires Tung, Pao, Ludwig: Forbes,* Aug. 1, 1970, pp. 20–3. According to *Time, Forbes* short-changed Mr. Ludwig in listing his worth at between $1 and $2 billion. In its Nov. 30, 1970, issue (p. 76), *Time* said Ludwig was "worth between $2 billion and $3 billion."

277 *Barracuda Tanker Corporation: Fortune,* Feb. 1969, p. 178.

278 (Footnote) *IRS's skeptical look at "captive insurance companies": Business International,* Sept. 17, 1971, said that IRS was mainly concerned that the "captive" companies be more than paper entities operating out of a desk drawer, and that their premiums paid by the parent be the same as if negotiated "at arm's length" with an unrelated insurance company. But, said *BI,* as of that writing, "IRS intervention does not appear to jeopardize the long-term attraction of CICs."

280 *Eli Lilly & Co.:* Eli Lilly & Co. v. U.S., 372 F.2d 990 (1967).

281 *Congress re "anomalous results" of WHTC's:* H. Rep. 337, 83-2, pp. 77–8 (1954).

282–3 *Aramco testimony re Saudi Arabian royalties-to-"taxes" switch:* Joint Hearing by Senate Judiciary and Interior committees, 1959, pp. 1235–1449, cited by Boris I. Bittker and Lawrence F. Ebb, *United States Taxation of Foreign Income and Foreign Persons,* 2d. ed. (Federal Tax Press, 1968), pp. 226–9.

283 *1956 Aramco "royalties":* Engler, p. 224.

283 Fortune *ad for Irish holiday:* Jan. 1972, p. 135.

285 *Liquidating Puerto Rican corporation and bringing back profits, tax-free:* IRC Sec. 243.

285 *Half of U.S. exports in two categories:* Musgrave, p. 199.

286 *Half of U.S. exports from 93 companies:* 1971 SFC 731.

286 *Portion of overseas earnings to large corporations:* Musgrave, Table 8, p. 200.

286 *Proportion of U.S. corporations by asset size:* 1967 Corporate SOI, p. 32.

286 (Footnote) *Firms seeking U.S. help to subvert foreign regime:* For accounts of ITT's activities in this regard, see *Newsweek,* Apr. 3, 1972, pp. 18–20, and *Time,* Apr. 3, 1972, p. 42.

13. Timber—Ideal for Your "Tax Shelter"

287 *$175 million of "tax welfare" for timber:* Statement of Treasury Undersecretary Edwin S. Cohen to JCER, July 21, 1972, Appendix D.

287 *Five companies get $60 million "tax welfare":* Tr. 434–5.

288 *Profits and taxes of five companies:* 118 CR H6714 (Daily), July 19, 1972. For source of these figures, see note, p. 209.

288 *One-fourth Federal expenditures for forest care:* Budget, FY 1973, p. 249. See also Sunley, pp. 333–4.

288 *Congress conferred capital gains on timber:* IRC Sec. 631.

288 (Footnote) *Roosevelt veto:* H. Doc. 443, 78-2, pp. 1–3 (1943).

289 *Nine-tenths of companies' profits in capital gains:* Tr. 433, Table 1.

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289 *Increase of five companies' share from 51.3% to 57.3%:* Sunley, p. 327.

289 (Footnote) *Senator Barkley's complaint:* 90 CR 1950 (1944).

290 *Timber losses fully deductible:* IRC Sec. 1231(b)(2). The same "one-way street" provision applies to coal and iron ore royalties as well.

291 *Combined effects of timber preferences on taxes, rates of return:* Sunley, p. 323.

292 *Timber valuation problems:* For examples of such disputes, see Polson Logging Co., 12 TCM 664 (1953); Cascade Lumber Co. v. Squire et al., 57-2 USTC, para. 9841 (1957); and Deer Park Pine Industry, Inc. v. Squire et al., 60-2 USTC, para. 9608 (1960).

14. Old Loopholes Never Die, They Just Get Bigger

295 *Sen. La Follette on depletion:* 88 CR 8017 (1942).

295 (Footnote) *Sen. McKellar on ball and sagger clay:* 88 CR 8021–2 (1942).

296 *Sen. Humphrey, "How far shall we go?":* 97 CR 11812 (1951).

296 *1963 court ruling on depletion for water:* Marvin Shurbet v. U.S., 63-2 USTC, para. 9528 (1963).

296 *1969 Tax Court on underground steam: Wall Street Journal,* Aug. 6, 1969, quoted in Russkay and Osserman, p. 123. See *A. E. Reich,* 52 TC 700; *Rowan,* 28 TCM 797.

296 *Eisenstein quote:* p. 176.

297 *National Sand and Gravel Association:* 1951 HWM 1539.

297 *Sen. Douglas re "just as good a claim":* 97 CR 11811–2 (1951).

297 *1954 request of Sand and Gravel Association:* 1954 SFC 1267.

297 *Two Senators from Texas:* 100 CR 9043 and 9450 (Daily), July 1, 1954.

297 *Sen. Elmer Thomas on rock asphalt:* 88 CR 8022–3 (1942).

298 *Congress extended depletion list:* Sec. 15, H.R. 4069, 80–1; 93 CR 997–8, July 24, 1947.

298 (Footnote) *Medical expenses enacted "for the duration":* S. Rep. 1631, 77-2, p. 6 (1942).

298 (Footnote) *Sand and Gravel Association:* 1954 SFC 1267.

299 *Douglas-Thye exchange:* 97 CR 12336–7 (1951).

299 (Footnote) *Two tax experts on "one-way street" for banks:* Russkay and Osserman, p. 205.

300 *Sen. George on "chicken amendment":* 97 CR 12336–7 (1951).

300 *Capital gains for coal royalties:* Revenue Act of 1951, Sec. 325; S. Rep. 782, 82-1, p. 42 (1951).

301 *Kennedy Administration proposed repeal of capital gains for coal royalties:* 1963 HWM 151–2.

301 *Capital gains for iron ore royalties:* IRC Sec. 631.

301 *Alvord on justice of Mayer amendment:* 1951 SFC 1478.

302 *Treasury Department on rationale for DISC:* 1971 SFC 36.

303 *American Bar and other groups favoring retirement deductions for the self-employed:* 1959 SFC Hearings on H.R. 10.

303 *Sen. Smathers, "have not heard the last of this one":* 108 CR 17675 (Daily), Sept. 5, 1962.

305 *Sens. Long and McCarthy:* S. Rep. 1615, 86-2, p. 47 (1960).

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305 *Sen. Gore:* 108 CR 17716 (Daily), Sept. 6, 1962.

305 *Fred and Briedy Heisler:* New York *Times*, June 25, 1972.

305 *Gloria Swanson on depletion for actresses:* Washington *Post*, Mar. 28, 1972, p. B1.

305 *Jockeys' Guild of America on depletion for jockeys:* See Sen. Eugene McCarthy at 106 CR 13225 (1960).

305–6 *National Football League Players' Association; Douglas-Carlson interchange:* 1963 SFC 2495–6 (quoted in Russkay and Osserman, p. 93).

306 *Randolph Paul on "men who came to dinner":* 1955 JCER 309.

15. Tax Handouts Behind Closed Doors

309 *Background of Continental Oil–Consolidation Coal "ABC":* See Senate speeches by Sen. Albert Gore of Tennessee, 112 CR 12684–8, June 8, 1966, and at 112 CR 18979–80, Aug. 11, 1966.

310 *30,000 "letter rulings" per year:* In FY 1971, for example, IRS issued about 33,000. Letter from Assistant IRS Commissioner Swartz to Sen. Ribicoff, Aug. 15, 1971.

310 *14,000 request accounting changes:* Rulings Compendium, p. 72-117.

310 *Treble-damage ruling in electric company case:* Rev. Rul. 64-224. *$400 million cost estimate:* Rulings Compendium, p. 72-104; *$250 million for electric companies alone:* see Morton Mintz and Jerry S. Cohen, *America, Inc.: Who Owns and Operates the United States* (Dial, 1971), in which they say damage suits against electric companies were settled "for almost $500 million" (p. 71).

311 *Copper company rulings:* See Rulings Compendium, p. 72-103 and pp. 107–10. *Re "some stretching of past law and practice" by IRS:* This ruling centered on the question of whether the losses suffered by the copper companies when the Chilean government expropriated their assets in Chile should be immediately deductible for U.S. income tax purposes. This in turn involved, in essence, a question of fact: whether the loss was beyond any hope of recoupment (e.g., through a change in Chilean policy and the return of the assets to the companies). Ordinarily, in issuing ruling letters, the IRS steadfastly refuses to pass on such questions of fact. It was this usual policy from which critics say IRS departed in the case of the copper companies.

311 *U.S. Steel ruling:* The situation here was that the company had generated a large amount of "excess foreign tax credits" (see Chapter 12) from its subsidiary in Venezuela (Orinoco Mining). Those excess credits were about to expire, under the law, and thus, in effect, "go to waste." The only way that unhappy result could be avoided was to quickly generate some profits in the Venezuelan company, against which the about-to-expire credits could be applied. The solution: quickly to sell the right to *future* income from the Venezuelan mining operation, and apply the proceeds of the sale to use up the credits before they expired. But that had two distinct drawbacks. For one thing, to get anyone to buy those future rights—which was tantamount to borrowing money for

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future repayment—U.S. Steel would have to pay what amounted to interest; second, since Orinoco's income for the next few years had already been committed to the "purchaser," it would be operating at a substantial loss during those years—and under the generally applicable law, those losses could not be deducted by U.S. Steel (because Orinoco was a *subsidiary*, not a *branch* of U.S. Steel). That was where the ruling saved the day. U.S. Steel asked—and received IRS assent—to have its cake and eat it too: to take in the immediate income and get the advantage of the about-to-expire credits and *then*, when Orinoco began to show losses, to get special permission to treat Orinoco *as if it were a branch*, so that it could combine its tax return with U.S. Steel's. Thus the American "parent" got the full advantage of the "loss" deductions.

312 *Only two independent coal companies in 1972:* Sen. Philip Hart of Michigan, Chairman of the Senate Antitrust Subcommittee, quoted in the Washington *Post*, Apr. 14, 1972, at p. A17.

312 *1969 Congressional reversal of "ABC" transactions:* IRC Sec. 636; *reversal of treble-damage ruling:* IRC Sec. 162(f) and (g).

313 (Footnote) *Closed-door meeting in office of IRS Commissioner Mortimer Caplin:* See Caplin testimony in Hearing before Senate Antitrust Subcommittee, July 27–29, 1966, at p. 89.

313–14 *IRS lawyer re "questionable chances" of success:* Antitrust Hearing (see above), p. 124.

314 (Footnote) *IRS attorneys convinced in 1961:* Acting IRS Commissioner Harding letter of Oct. 18, 1961, stating IRS's "opinion, after full study of the [judicial] decisions" that disallowance of a tax deduction for treble-damage claims was the proper interpretation of the law. Antitrust Hearing (see above), p. 124.

314 (Footnote) *Examples of IRS litigation on smaller questions: on elm disease damage*—see Appleman v. U.S., 338 F.2d 729 (1964); *on termite damage*—see Denton v. Bingler, 63-2 USTC, para. 9731 (1963).

314 *IRS directive to publish all rulings of "general interest":* Letter from IRS Commissioner Dunlap of May 28, 1952, cited at Rulings Compendium, p. 72-117.

315 *Only 480 rulings published a year:* Rulings Compendium, pp. 72–118.

315 *Three practicing attorneys:* George B. Javaras, Howard G. Krane and Jack S. Levin, in Rulings Compendium, pp. 138–40.

315 (Footnote) *Two Washington reporting services that summarize unpublished rulings:* "Shop Talk" in the *Journal of Taxation* and "Tidbits" in *Tax Management*.

315 *Enactment of Freedom of Information Act:* See U.S. Code 552(a)(2)(B), which required "interpretations [by Federal agencies] to be made available for public inspection and copying," together with "a current index" of those interpretations.

315 (Footnote) *One of the Congressional explanations of that law:* H. Rep. 1497, 89-2, p. 7.

315 *IRS change of "precedent" to "reference":* See para. 18 in the government's "Statement of Material Facts Not in Issue" in Civil Action 841–72 (the litigation described on p. 315).

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315 *Legal action filed to compel IRS:* See above note.
315–16 *Allstate Insurance Co. case:* 329 F.2d 346 (1964).
317 (Footnote) *Dupont–General Motors hearing:* Hearing on "Taxation of Exchanges and Distributions Pursuant to Anti-Trust Decrees" before House Ways and Means Committee, Aug. 24, 1961.
318 *Prof. George Cooper:* Rulings Compendium, pp. 123–4.

16. Death May Be Inevitable, But Death Taxes Sure Aren't

323 (Table) *Actual tax paid:* Preliminary SOI, Estate Tax Returns, 1969, p. 35, col. 53.
323 *Estate taxes paid by families with over $20,000 incomes:* Tr. 106.
324 *Estate tax rates unchanged; personal exemption and income tax rates changed since 1941:* Pechman, *Federal Tax Policy*, Tables A-9, A-1, A-2.
325 *Ailsa Mellon Bruce: Parade*, Jan. 1972, p. 2.
325 *Decline in share of Federal revenues from estate tax:* Tr. 106 and Westfall, pp. 986, 987.
325 *Theodore Roosevelt on wealth-leveling: 17 Works of Theodore Roosevelt* (Memorial Edition), pp. 504–5.
326 *Franklin Roosevelt on "inherited economic power":* H. Rep. 1681, 74-1, Part 2, p. 643 (1935).
326 *Herbert Hoover on "thawing frozen capital":* 3 *Memoirs* 35–6.
326 *Andrew Carnegie on leaving fortunes to children:* Carnegie, *The Gospel of Wealth* (Doubleday, 1933), pp. 8, 9, 49, 50.
326 *Andrew Mellon and Garrard B. Winston:* Mellon, *Taxation: The People's Business* (1924), p. 119; 1925 National Tax Association Proceedings 249–51.
327 *133,944 estate tax returns filed; 30% of wealth excluded:* Preliminary SOI, Estate Tax Returns, 1969, p. 32, cols. 1, 2.
327 *Louis Eisenstein characterization:* 1955 JCER 838.
327 *$5½ billion removed by marital deduction:* Preliminary SOI, Estate Tax Returns, 1969, p. 35, col. 47.
328 *More than half of spouses survive more than 10 years:* Tr. 111, Table 3.
328 *Pres. Truman's unavailing veto message:* H. Doc. 585, 80-2, p. 4 (1948).
328 *$2 billion loss to Treasury:* 1958 SOI (Estate/Gift), p. 57.
329 *Treasury 1968 recommendation on unlimited marital deduction:* Tr. 119, 331–84.
329 *Treasury on "smaller estates":* Tr. 111, cited at Westfall, p. 995.
330 *Treasury 1957–59 survey of generation-skipping:* Tr. 117, Table 9.
330 *Trust company president in 1957: Fortune*, Nov. 1957, p. 238.
331 *Herbert Hoover's voice:* 3 *Memoirs* 136.
331 *$1,400,000 saving in taxes:* Without the gift, his estate tax would be a little over $6 million. With the gift, he would pay about $550,000 *gift* tax, plus slightly over $4 million in *estate* taxes, for a total tax of about $4.6 million—$1.4 million less than he otherwise would have paid.
332 Journal of Accountancy *example:* Mr. A, during his lifetime, gives his son $5 million and pays a $1,800,000 gift tax. In order to convey the same amount of money ($5 million) to his son by will,

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after his death, an estate of $15 million would be required, involving an estate tax of $10 million. Thus the gift tax ($1.8 million) is less than one-fifth of the estate tax ($10 million).

332 *Treasury findings on lifetime gifts v. bequests:* Tr. 115, Table 7.

332–3 *Case of Oliver Johnson:* Estate of Oliver Johnson v. Commissioner, 10 TC 680 (1948).

333 *Congress acknowledging gift tax escapes:* H. Rep. 2319, 81-2, p. 62; S. Rep. 2375, 81-2, p. 57 (1950).

333 *DuPont gift of $36 million:* In re DuPont, 41 Del. Ch. 308, 194 A.2d 309 (1963), cited at Westfall, p. 988, note 10.

334 *John D. Rockefeller and 37 living descendants:* New York *Times*, May 24, 1937, p. 10.

334–7 *Devices for avoiding tax on political gifts:* Jerry Landauer, *Wall Street Journal*, Sept. 27, 1972, p. 1.

335 *Re "politicians running for office partly at Treasury expense":* They can already do that to a very minor extent, under a law enacted in 1971 permitting couples to take tax *credits* of half of political contributions up to $25 or *deductions* for contributions up to $100 (half that amount in each case for an unmarried person) —IRC Secs. 41 and 642(a)(3). As you can see, the tax advantages there are strictly limited; in the capital gains avoidance device, however, the donor can write his own ticket, limited only by his own wealth and generosity and the inventiveness of the recipient party in conjuring up special committees to cash in the stock in $3,000 units.

335 *Richard Mellon Scaife donation of $990,000 to Republicans:* Washington *Post*, Oct. 25, 1972, p. A1.

337 *Congressional explanation for $3,000 gift-tax exemption:* H. Rep. 708, 72-1, p. 29; S. Rep. 665, 72-1, p. 41 (1931).

337 *Louis Eisenstein estimate:* 1957 JCER 812; see also 94 CR 7908 (1948).

338 *Eisenhower Administration annoyed at insurance industry: Wall Street Journal*, Nov. 17, 1954.

339 *Ailsa Mellon Bruce:* See note re p. 325, above.

339 *Sen. McGovern proposal:* 118 CR S73–5 (Daily), Jan. 19, 1972.

340 *Pliny the Younger:* Schultz, *The Taxation of Inheritance* (1926), p. 6.

340 *Sen. William V. Allen:* 31 CR 5081 (1898).

340 *Andrew Mellon:* Mellon, *Taxation: The People's Business* (1924), p. 123.

340 *John Stuart Mill:* Mill, *Principles of Political Economy*, Book 2, Chapter 2, Section 4.

340 *Roger Babson:* Gustavus Myers, *The Ending of American Hereditary Fortunes* (Kelley, 1939), p. 255.

17. Some Moral Preachments of Our Tax Laws

343 *Nora Payne Hill:* Nora Payne Hill v. Commissioner, 13 TC 291 (1949); 181 F.2d 906 (1950).

346 *67% "tax" on welfare recipients; 30% "tax" on food-stamp users:* "Why Is Welfare So Hard to Reform?" by Henry Aaron (preliminary draft), 1972.

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18. The Slightly Privileged Many

351 *Share of benefits of personal exemption for the non-needy:* Paul M. Dodyk, "The Tax Reform Act of 1969 and the Poor," 71 *Columbia Law Review* 758 (May 1971), at 798, Table IX.

351 *$2 billion added revenue by replacing $750 exemption with $150 credit:* Sen. Gaylord Nelson estimated that such a step would raise an additional $1.9 billion. 118 CR S4289 (Daily), March 21, 1972.

351 *Congress on economic handicaps of the elderly:* H. Rep. 1274, 80-2, p. 20 (1948).

352 *Government study on living expenses of the elderly:* Social Security Administration Research Note 12, Sept. 27, 1961, p. 9.

353 *Kennedy proposal of flat $300 credit for the elderly:* 1963 HWM 44.

354 *Income tax "can't provide a shirt for the naked":* Groves, *Federal Tax Treatment of the Family* (Brookings Institution, 1963), p. 115 (preliminary manuscript).

354 *$13 billion cost of nontaxation of government benefit payments:* Pechman-Okner, Table A-3, col. 6.

355 *$15.5 billion of untaxed "rental" income:* Pechman-Okner data.

355-6 *Figures on tax savings and untaxed "rental" income for various priced houses:* based on Henry Aaron, "Income Taxes and Housing," *American Economic Review*, Dec. 1970, Table 1, p. 790.

356 (Footnote) *British abandonment of rental income tax: The Economist*, Apr. 6, 1953, p. 71.

357 *"Tax expenditures" for housing six times direct outlays:* See note re p. 144, above.

358 *Home ownership up 50% since 1940:* Richard Goode, "Imputed Rent of Owner-Occupied Dwellings Under the Income Tax" (Brookings Institution Reprint No. 50), pp. 509–10.

358 *66 cents v. $6,000 per year in housing "tax welfare":* Pechman-Okner, Table A-2, col. 5 divided by Table 8, col. 1.

361 *Dan Throop Smith re "sick pay" abuses: Federal Tax Reform*, p. 58 (1961).

362 *Nixon on expanded deductions for the self-employed:* Message to Congress on Pension Reform, Dec. 8, 1971.

363 *1948 Treasury survey on taxpayer errors:* C. H. Kahn, *Personal Deductions in the Federal Income Tax* (National Bureau of Economic Research), p. 169n.

364 *Volume of personal deductions, 1950–70:* IRS "Statistics of Income" for the respective years.

365 *Kennedy proposal for cutback on personal deductions:* 1963 HWM 47.

367 *1969 cutback in interest deductions:* IRC 163(d).

368 *Cat Lovers, Footprint Association, Genealogical Society as approved recipients of tax-deductible gifts:* IRS Cumulative List of Organizations, Dec. 31, 1970, pp. 28, 315, 242, respectively.

369 *Prediction of effect of standard deduction in 1942:* Speech by Stanley S. Surrey, 109 CR 3683 (Daily), Mar. 11, 1963.

369 *1970 percentages of income given to charity:* 1970 SOI (Preliminary), p. 40, cols. 3, 10.

369 *1968 percentages of income given to charity:* 1968 SOI, p. 75.

369 *Taxpayer who gave just $463 to charity:* Tr. 92.

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369 ***Two oilmen with $4,500,000 who gave zero to charity:*** **Cases A ($2,110,060 income) and B ($2,271,723 income). 109 CR 24399–400, Dec. 12, 1963.**

371 ***Proposal to make fallout shelter expenses deductible:*** **H.R. 104, 88-1 (1963).**

371 ***1972 Presidential candidates endorsed tax credits for school tuition:*** **Nixon: Washington *Post*, Oct. 26, 1972; McGovern: "Aid to Parents of Children in Parochial and Bona Fide Public Schools," Statement in Chicago, Ill., Sept. 19, 1972.**

19. Letter from an Indignant Taxpayer

372 ***Irene Saunders' salary and taxes:*** **Potentially inquisitive Internal Revenue agents should be advised that some illustrative license has been taken here regarding Miss Saunders' salary, her taxes, and the moonlighting activities to which she refers on p. 379.**

374 ***Geneen:*** **1972 ITT Proxy Statement.**

374 ***Roche:*** **GM Proxy Statement, Apr. 13, 1972.**

374 ***Shifting $100 million tax burden:*** **1969 SFC Report, p. 333.**

376 ***Sen. Long's suggestion of fingerprinting welfare recipients:*** **The Washington *Post* of Mar. 4, 1972 (p. A1), in reporting that the Senate Finance Committee was "studying a plan for fingerprinting all applicants for Social Security cards in order to curb fraudulent acquisition of cards by illegal immigrants and welfare cheaters," quoted Sen. Long as follows: "We would only require fingerprints in 'high risk' cases, like a person who was over 30 and still doesn't have a card. If we ask for fingerprints [of children receiving Social Security cards in school] at age 6, it would be on a voluntary basis. I personally think that everyone ought to have fingerprints on file, but I don't think we should require it at age 6."**

376 ***Sen. Long on welfare recipients' "filthy" neighborhoods:*** **Washington *Post*, Dec. 19, 1971, p. C4.**

376 ***Banks getting quarter of a billion a year:*** **Tr. 102.**

377 ***Seventeen-year transition period for banks:*** **IRC Sec. 585.**

377 ***Korean war tax increase effected immediately; heavier on poor than on rich:*** **New York *Times*, Sept. 23, 1950, p. 1.**

378 ***John D. Rockefeller, III, about voluntarily paying 5% to 10% tax:*** **1969 HWM 1567, Feb. 27, 1969.**

378 ***67% "tax" on welfare recipients; 30% "tax" on food-stamp users:*** **See note re p. 346, above.**

380 ***General Motors' three-and-a-half-billion-dollar profit:*** **118 CR H6713 (Daily), July 19, 1972.**

20. Why the Wealthy Few Win Out over the Un-Rich Many

381 ***Roughly 60 million Americans who would benefit from $800 personal exemption:*** **1970 SOI (Preliminary), p. 22, col. 6, listing 59.3 million *taxable* returns filed in 1970.**

381 ***30,000 who benefited from 50% top rate on salary income:*** **1969 SFC Report, p. 333.**

381 ***Only 1 in 10 got any capital gains:*** **1970 SOI (Preliminary), p. 38, col. 2, showing that 7.9 million returns (out of a total 74 million returns filed that year) listed any capital gain or loss transactions in 1970.**

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381 *Only 1 in 100 got more than $1,500:* 1970 SOI (Preliminary), p. 38, cols. 2, 4, shows that only those with "adjusted gross incomes" of $30,000 or more listed more than $1,500 of *average* net capital gains in 1970.

382 *90% of political contributions come from 1% of the population:* *Time*, Nov. 23, 1970, p. 11.

383 (Table) *Political gifts by corporation executives and wealthy families:* Herbert E. Alexander, *Financing the 1968 Election* (Heath, 1971), p. 185 (25 largest corporations), p. 180 (prominent families), p. 184 (American Petroleum Institute), p. 188 (persons worth $150,000,000 or more).

383 *Contributions by bank officers:* Press statement by Rep. Henry Reuss of Wisconsin, Apr. 18, 1972.

383 *Portion of Humphrey campaign expenses from 50 individuals:* Alexander (see above), p. 152. Breakdown of their occupations is in Appendix J, pp. 341–4.

383 *Portion of Presidential funds from contributors of $500 or more:* Alexander (see above), p. 163.

384 *Account of Kleppe-Burdick campaign:* Washington *Post*, Nov. 22, 1970, p. A14.

385 *Contributions by officers of Litton Industries: Congressional Quarterly*, Sept. 18, 1970, p. 2292.

385 *White House pressure on behalf of Pew Foundation:* New York *Times*, Oct. 14, 1971.

385 *Harvey family generosity to Democratic party: special provision for Harvey Aluminum Co.: Wall Street Journal*, Apr. 26, 1967, p. 1.

386 *Contributions from the oil industry: Alexander* (see above), p. 184; *Congressional Quarterly*, Sept. 18, 1970, p. 2292; Washington *Post*, Jan. 31, 1971, p. A25.

386–7 *Richard Harris in* The New Yorker: Aug. 7, 1971, pp. 52–3.

388 *Sen. Long speech re "monetary bread cast upon the water":* Quoted in Harris *New Yorker* account (see above), p. 53.

390 *V. O. French on flexibility of seniority system re Finance Committee membership:* French, p. 32.

391 *Sen. Douglas on fate of loophole-closing amendments:* 105 CR 11910 (1959).

393 *Secrecy of Congressional tax-writing committees:* French, p. 33.

394 *Examples of complex sections of the Internal Revenue Code:* IRC Sec. 341(e)(5)(A) and IRC Sec. 509(a).

394 *Learned Hand on complexity of the tax laws:* quoted by Joseph Goulden, *The Superlawyers* (Weybright, 1972), p. 308.

396 *Clay Pipe Industry Depletion Committee, etc., as Congressional witnesses:* Index of 1969 SFC Hearings, Vol. 7, p. xxvi.

397 *Billion-dollar cost of oil shale amendment:* Joseph Goulden, *The Superlawyers*, p. 309.

21. What Should Be Done About Our Tax System?

398 *Lowering all tax rates by about two-fifths:* Pechman-Okner, Table 9, col. 3.

399 *Raising upwards of $77 billion:* Pechman-Okner, Table 8, col. 5.

404–5 *Rate schedule suggested by Pechman and Okner:* Pechman-Okner, Table 10, Rate Schedule 5.

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408 (Table) *Average family income:* Pechman-Okner, Table 2, col. 1 divided by Table 8, col. 1.

408 *Average tax under present law and no-loophole system:* Pechman-Okner, Table 6, cols. 2 and 1 are divided by Table 8, col. 1.

409 *Three families with $2.5 million of dividend income:* 1970 SOI (Preliminary), p. 36, cols. 11, 12 (comparing all returns with taxable returns).

409 *5 million taxpayers making less than $3,000 a year:* 1970 SOI (Preliminary), p. 22, col. 6, shows 5,013,966 *taxable* returns filed in 1970 with "adjusted gross incomes" of less than $3,000.

410 *Justice Holmes re "pay[ing] for civilized society":* Compañía General de Tabacos v. Collector, 275 U.S. 87, 100 (1927).

410 *Andrew Mellon taking Treasury official with him:* A. M. Schlesinger, Jr., *The Age of Roosevelt, Vol. I: Crisis of the Old Order:* 1919–1933 (Houghton Mifflin, 1957), p. 63.

411 *Andrew Mellon on low tax rates as salvation of free enterprise:* Mellon, *Taxes: The People's Business*, pp. 17, 18, 69, 80.

411 *Top tax rate ranged from 82% to 94%:* Pechman, *Federal Tax Policy*, Table A-2, p. 256.

412 *Sen. McGovern capital gain proposal:* In speech to New York Society of Security Analysts, Aug. 29, 1972.

414 *George Meany opposition to ending "sick pay" provision:* 1963 HWM 1962.

414–16 *Plan for Federal financing of election campaigns:* This plan is embodied in a bill (S. 1039) introduced by Sen. George McGovern, Mar. 1, 1971 (117 CR 4396–403), which the author helped develop for the Senator.

417 *1968 figures on apportionment of before-tax privately earned-income:* Roger A. Herriott and Herman P. Miller, "Who Paid the Taxes in 1968" (paper prepared for the National Industrial Conference Board meeting in New York, Mar. 18, 1971), p. 3. Cambridge Institute pamphlet, p. 17. These figures reflect "total income" (before taxes and before government benefit payments). This differs from "money income" (see note below) in that, in addition to "money income," it includes the following: income underreported in Census Bureau Surveys; "imputed" income (see Glossary) such as the rental value of owner-occupied homes; capital gains not reported in Census Bureau surveys; retained corporate earnings that under some analyses are attributed to the shareholders; and some indirect taxes less government benefit payments. For more detail, see Cambridge Institute pamphlet, p. 17, note 2.

417 *1962 figures on concentration of wealth: Inequality and Poverty*, ed. by Edward C. Budd (Norton, 1967), p. xxii. Cambridge Institute pamphlet, p. 22.

418 (Table) *Before- and after-tax apportionment of incomes: Inequality and Poverty* (see above), pp. xiii, xvi. Cambridge Institute pamphlet, p. 20.

418 *The view "from the bottom of the heap":* These figures, from the Herriott and Miller paper (see above note), list *money* income, as published by the Bureau of the Census.

419 *Distribution of income, 1947–70:* U.S. Bureau of the Census, Current Population Reports, Series P-60, No. 80, Oct. 4, 1971, Table

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14, p. 28. Cambridge Institute Pamphlet, p. 15. Figures show money income before deductions (for Federal and state income taxes, Social Security contributions and other taxes) and are for families (two or more people residing together who are related by blood, marriage or adoption).

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421 *Sen. McGovern proposal for merging welfare and tax systems:* 118 CR S73–5 (Daily), Jan. 19, 1972.

424 *Statement by Republican Ways and Means members:* H. Rep. 871, 78-1, Part 2, p. 7 (1943).

424 *Mills and Curtis statements:* Quoted in Scripps-Howard newspaper series on taxes by Jack Steele, Jan. 1958.

424 *Randolph Paul re "wasting asset":* 1955 JCER 307.

425 *James C. Carter before the Supreme Court:* Pollack v. Farmers' Loan and Trust Co., 157 U.S. 429, 516 (1895).

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10-73

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